



International Covenant on Civil and Political Rights

Distr.: General
12 September 2024

Original: English

Human Rights Committee

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

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

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

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

1.3 On 26 June 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the

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

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

*** A joint opinion by Committee members Marcia V.J. Kran, José Manuel Santos Pais and Teraya Koji (dissenting) is annexed to the present Views.



State party not to enforce the culling orders issued to the author on 26 February 2013 and 20 February 2019, respectively, while the communication was under consideration by the Committee. The State party was also informed that the request was issued without prejudice to the implementation of aspects of the culling policy not covered by the orders.¹

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

Facts as submitted by the author

2.1 The author is a Sami reindeer herder. He is the leader of a *siida* unit in herding district No. 20 in Fálá, in Finnmark county. A *siida* is a group of reindeer owners who engage jointly in reindeer husbandry in specific areas. A *siida* unit is a family group or an individual who is part of a *siida* and who engages in reindeer husbandry under the leadership of one person. The author's father and grandfather also practised reindeer husbandry until they discontinued their practices in 2001/02 and 2003/04, respectively. The author's grandfather transferred his reindeer to his daughter, the author's aunt, who in turn transferred her *siida* unit to the author in 2010. The author had always wanted to participate in reindeer husbandry and, after attending a Sami upper secondary school, he attended a reindeer husbandry school.

2.2 When the author took over as leader of the *siida* unit in 2010, the unit had 71 reindeer. By 2011, the number had increased to 94, in 2012 to 116, in 2013 to 150, in 2014 to 145 and in 2015 to 215 reindeer. At the time of the submission of the complaint in 2018, there were approximately 350 reindeer in the *siida* unit. The reindeer numbers from 2010 to 2014 are indicative of reindeer husbandry in the establishment phase. There are nine other members in the *siida* unit. According to the reindeer husbandry report of 2014/15, the author's aunt had 33 reindeer in the *siida* unit, while the author's grandfather, father, brother, sister and three cousins had between zero and four reindeer each.

2.3 The author's reindeer husbandry is economically marginal. Since 2012, the operation has suffered a deficit. As the author's husbandry is in the establishment phase, it is necessary to build up the reindeer herd to achieve economically sustainable reindeer husbandry.

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

2.5 In accordance with the agreement on procedures for consultations on the provisions of the Reindeer Husbandry Act between State authorities and the Sami Parliament signed by the Minister of Local Government and Regional Development and the President of the Sami Parliament on 11 May 2005, a position memorandum prepared by the Sami Parliament, dated 10 February 2006, stated that the Sami Parliament supported the idea of minority protection in order to maintain economically sustainable reindeer husbandry and to protect herders in the establishment phase. After the conclusion of the consultations on 6 June 2006, the Ministry of Agriculture and Food prepared a bill that was submitted to the Sami Parliament for review. Having considered the bill in September 2006 in a plenary session, the Sami Parliament proposed that *siida* units with 200 or fewer reindeer should be protected in the

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

event of a reduction of the number of reindeer.² The Ministry did not agree with that proposal, considering that in the long-term, it could result in an industrial structure that would weaken the overall average profitability of the *siida*.

2.6 After the adoption of the Reindeer Husbandry Act, a process was initiated for setting the maximum number of reindeer in the herding districts. On 2 July 2011, Fálá herding district No. 20 applied for permission to herd a maximum of 2,000 reindeer, which was eventually approved by the Ministry. At the end of 2011, a maximum number had been set for all herding districts, after which the Reindeer Husbandry Administration notified the district of an order to prepare a reduction plan, as the district had 3,105 reindeers as of 31 March 2012. On 2 July 2012, a notification was also sent to the author indicating that, when the number of reindeer exceeded the maximum stipulated, there was an obligation to prepare a reduction plan, in accordance with the Act. If the Reindeer Husbandry Administration did not receive a reduction plan by 10 September 2012, the Reindeer Husbandry Board would carry out a proportionate reduction of the number of reindeer in accordance with the Act.

2.7 While the herding district failed to agree on a reduction plan, four of its six *siida* unit leaders agreed on 8 September 2012 that they would jointly herd four sixths of the district's total number of reindeer. The Reindeer Husbandry Administration did not accept that agreement as a reduction plan and, at a meeting on 26 February 2013, the Reindeer Husbandry Board decided to order the author to cull the spring herd of his *siida* unit from 116 to 114 reindeer by 31 March 2013, to 94 by 31 March 2014 and to 75 by 31 March 2015.

2.8 The author appealed against the culling order and the Reindeer Husbandry Board reviewed the case on 20 November 2013, dismissing the appeal but forwarding it to the Ministry, which also dismissed it, on 10 March 2014. On 16 September 2015, the Board ordered the author to cull his herd in accordance with the Ministry's cull order of 10 March 2014. He was also fined, pursuant to the Act, 2 kroner (about \$0.19) per day for each reindeer in excess of the maximum number. On 22 May 2015, the author brought an action against the State party before Indre Finnmark District Court claiming that the Ministry's cull order of 10 March 2014 was invalid.

2.9 On 18 March 2016, the District Court held that, as the cull order violated the author's right to protection of property under the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), it was invalid. The Court stressed that the author was one of very few reindeer herders who were significantly affected by the decision to reduce the number of reindeer, that its purpose could have been fulfilled otherwise and that it particularly affected young herders in the establishment phase. The State, represented by the Ministry of Agriculture and Food, appealed the judgment to Hålogaland Court of Appeal, which dismissed the appeal on 17 March 2017. It held that the cull order was invalid as it violated article 27 of the Covenant, namely the author's right to enjoy his own culture. The Court found that it was impossible to make a profit with a herd of only 75 reindeer and that the author would not have the means to garner continued economic benefit from reindeer husbandry after the required reduction in his herd.

2.10 The Ministry appealed the judgment to the Supreme Court which, on 21 December 2017, found that the cull order did not violate the author's rights. The Court noted that: (a) the validity of the cull order depended on whether it was in conflict with article 27 of the Covenant or the right to protection of property under the first Protocol to the European

² The author notes that, during the plenary session in September 2006, the Sami Parliament stated that, in accordance with the Law Committee's proposal, a provision must be included concerning protection of those with an average or lower than average number of reindeer in the case of a mandatory reduction pursuant to section 64 of the bill. The *siidas* must stipulate a minimum number of reindeer, by means of a unanimous decision in the *siida*. Each of the responsible units that had more than the stipulated minimum number of reindeer, determined by the *siida*, should reduce the excess number proportionally. If the *siida* could not reach a unanimous decision on the stipulated minimum number of reindeer, the Law Committee's proposal of 200 reindeer should apply. That would contribute to protecting young persons engaged in reindeer husbandry in the establishment phase and ensure economically sustainable reindeer husbandry for all those engaged in reindeer husbandry.

Convention on Human Rights; (b) the Reindeer Husbandry Act had been enacted to ensure ecologically, economically and culturally sustainable reindeer husbandry based on the Sami culture, tradition and customs in the interests of the herders and society in general; (c) the reduction in the number of reindeer pursuant to the Act had been ordered in the interests of the reindeer herders due to overgrazing; and (d) the Sami Parliament had agreed that the number of reindeer had to be reduced. The Court found that the proportionate reduction maintained the reindeer herders' interests as a group; the regulation affected everyone and ensured that the owners of the largest herds had to cull the highest number of reindeer. The reduction system met the criteria of being objective, reasonable and necessary to maintain the interests of the reindeer herders. While the system deprived the author, at least for a period, of the possibility of developing his business into a profitable one, his herd had been too small to begin with to yield an acceptable income. The Sami Parliament had been consulted throughout the legislative process and had had the opportunity to influence the regulation. The Court therefore concluded that there had been no violation of the author's rights under article 27 of the Covenant or his right to property under the first Protocol to the European Convention.

2.11 The author notes that the culling order of 26 February 2013 requires him to reduce his unit to 75 reindeer. He argues that it would be impossible to engage in reindeer husbandry as a principal business with such a low number, as it would mean slaughtering an estimated 25 animals per year, which would result in sales revenue of approximately 25,000 kroner (about \$2,338). In order to be eligible for a grant under the Reindeer Husbandry Agreement, the leader of a *siida* unit must have a minimum revenue of 50,000 kroner (about \$4,676), excluding value added tax, for the previous calendar year. Even with sales revenue that would trigger a grant, the operating expenses would far exceed the operating revenue. Since operating expenses, such as agricultural buildings and vehicles, are not proportionate to the size of the reindeer herd, *siida* units with fewer than 200 reindeer have the highest costs per reindeer. Compliance with the culling order would thus mean that the author would be unable to make a profit from reindeer husbandry, entailing a real risk that he would have to discontinue his reindeer husbandry. Moreover, with only 75 reindeer, there would be a real risk that the number of reindeer would fall to 50 in case of difficult weather conditions and due to predators. Section 16 (4) of the Reindeer Husbandry Act stipulates that *siida* units with fewer than 50 reindeer for five years must be terminated.

Complaint

3.1 The author claims that by ordering him to reduce his reindeer herd, the State party has denied him the right to enjoy his own culture, in violation of his rights under article 27 of the Covenant. While the purpose of the reduction of the number of reindeer under the Reindeer Husbandry Act may have been based on reasonable and objective grounds, namely, to preserve ecologically, economically and culturally sustainable reindeer husbandry based on Sami culture, the method chosen for regulating the reindeer numbers was neither reasonable nor necessary.

3.2 The author notes that he was in the establishment phase of his practice and was cautiously building up his herd in order to reach a level at which he could make a financial profit when the decision on reducing the number of reindeer was made. He argues that the authorities' decision prevents him from engaging in reindeer husbandry in accordance with the traditions of the reindeer husbandry culture.³ He also argues that it was not reasonable or necessary in order to ensure the continued sustainability of reindeer husbandry in the area to extend the culling order to reindeer units with fewer than 200 reindeer, considering the view of the Sami Parliament that small *siida* units should be exempted from such orders.

3.3 The author argues that, by failing to take the Sami Parliament's view into account, the State party authorities failed to consult properly with the Sami community and to consider

³ The author refers to the Committee's jurisprudence in *Kitok v. Sweden*, communication No. 197/1985, and *Mahuika et al. v. New Zealand* (CCPR/C/70/D/547/1993).

the community's rights to self-determination and to real and effective participation in the decision-making process.⁴

State party's observations on the merits

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

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

4.3 Against this background, Parliament decided to include the rule of proportionate reduction in the Reindeer Husbandry Act of 2007. It made the rule secondary in nature, meaning that it would apply: (a) only insofar as a district had not used internal self-governance for the reindeer owners to make alternative arrangements, if they did not want a proportionate reduction; and (b) only temporarily, until the reduction was carried out. Following the entry into force of the Act in 2007, an interdisciplinary working group consisting of reindeer herders, scientists and representatives from the Ministry spent about four years determining the maximum number of reindeer that the grazing land of each *siida* could support in a sustainable manner. In Finnmark county alone, 29 *siidas* consisting of 289 *siida* shares exceeded the maximum number of reindeer and therefore needed to reduce their herds by a total of 42,700 animals. Of the 29 *siidas*, everyone – except the author – complied with the reduction decisions and together reduced the number of reindeer from a total of 191,012 in 2011/12 to 145,795 by the end of 2014/15.

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

4.5 The State party argues that, when the author took over as *siida* unit leader, the available grazing land in Fálá did not give him any legitimate expectations of being able to increase his herd, as the grazing resources of the district represented a natural cap on the number of reindeer that could be supported in sustainable husbandry. When he acquired his aunt's *siida* share in 2010, the maximum number of reindeer in the district of Fálá was 1,300.

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

At that time, the number of reindeer for 2009/10 was 2,196. Hence, in 2010, there was no room for further growth of any of the *siida* shares. The State party also notes that the district has had very low slaughter weights, reaching an all-time low in 2016/17 when they dropped to 13.9 kg. This shows that there was no room to increase the maximum number of reindeer in the district and emphasized the need for the author to reduce his herd.

4.6 Regarding the merits of the author's claims under article 27 of the Covenant, the State party notes that it is undisputed that the Sami population is an Indigenous People and therefore a minority within the meaning of article 27, and that reindeer herding is a part of Sami culture. Nevertheless, it emphasizes that, since reindeer herding can also be a business activity, the term "culture" refers to the way of life related to reindeer herding and not the economic aspects of reindeer herding per se.⁵ It argues that article 27 does not indicate that the right to enjoy culture cannot be regulated or that it cannot be restricted. Hence, article 27 does not prevent a State party from regulating activity, including where the activity is an essential element of the culture of an ethnic community.

4.7 The State party submits that the decision to impose a culling order on the author does not represent a violation of his rights under article 27 of the Covenant because he has not been denied the right to enjoy the Sami reindeer husbandry culture for the following reasons: (a) the decision involved an obligation to reduce his herd from 116 to 75 reindeer, thereby bringing the number of reindeer in the *siida* down to a sustainable level; (b) the decision is limited in time, and it therefore prevents the author from increasing his herd only temporarily. When he has complied with the decision, he will be able to increase his herd, provided that there is room for an increase within the maximum number of 2,000 reindeer that the *siida* can support; (c) each of the six *siida* shares were ordered to carry out a proportionate reduction of 35 per cent of their herds and were thus to carry the burden of reduction collectively and in accordance with their abilities, thereby constituting fair treatment of all Sami reindeer herders in the *siida* and securing equal treatment in compliance with article 26 of the Covenant; and (d) the decision did not interfere with the author's legal right to own reindeer and to take part in the way of life associated with reindeer husbandry. In fact, the decision gave the author the possibility to continue to enjoy the way of life associated with reindeer husbandry to the very same degree as he could reasonably have expected when he acquired the *siida* share in 2010. The State party stresses that, when considering this case, it is important not to lose sight of this aspect; if the author is permitted to expand his herd, it will have a detrimental impact on other families' established way of life. None of these families have a large income from reindeer herding. Most families that have reindeer husbandry as their primary source of income are unlikely to be able to reduce their herds significantly. Should the author and the other smaller *siida* shares in Fálá be entitled to increase their herds, it would force the established families to reduce their herds by more than a proportionate share, leading to an unsustainable outcome for the established herders.

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

4.9 The State party argues that the proportionate reduction rule under the Reindeer Husbandry Act strikes a fair balance between the interests of the smaller and the larger *siida* shares. The proportionate reduction in the author's case meant that the relationship between the various *siida* shares would remain the same after the reduction. This is particularly

⁵ The State party refers to the Committee's general comment No. 23 (1994), para. 7, and *Kitok v. Sweden*, para. 9.2.

important, since the other Sami *siida* shares and families in Fálá would also be able to assert individual rights under article 27 of the Covenant.

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

4.11 The State party notes that the right of a minority group to be consulted does not feature in the Committee's jurisprudence on similar cases in which an individual has claimed individual rights that are in conflict with the interests and the exercise of parallel rights of other individuals within the group.⁶ Hence, the question of a right to be consulted is not relevant when assessing whether there has been a violation of article 27 of the Covenant in the matter at hand. Even if a right to be consulted were to be applied in the present case, the State party argues that any such criteria must be considered to have been met. The right to be consulted cannot reasonably be understood as a veto right or the right to a particular outcome of the decision-making process. The aim of introducing a procedural aspect of article 27 must be to involve the minority group in the process to ensure that the facts and interests pertaining to the minorities are being brought to light, with the aim of reaching an agreement on proposed measures.

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

4.13 In the present case, the State party argues that the rule of proportionate reduction served the interests of the affected *siidas* as it was necessary to reduce the number of reindeer because of overgrazing. The Sami Parliament also agreed that reindeer numbers had to be reduced. In order to achieve this, the authorities introduced a rule which made effective enforcement possible. Equal treatment in the form of proportional reduction was the solution. The State party notes that in the preparation of the legislation, the Ministry emphasized that protecting the smallest *siida* shares could give the industry an unfavourable structure and that

⁶ The State party refers to *Lovelace v. Canada*, communication No. 24/1977, *Kitok v. Sweden* and *Paadar et al. v. Finland* (CCPR/C/110/D/2102/2011).

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

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

⁹ *Kitok v. Sweden*, para. 9.8.

¹⁰ *Mahuika et al. v. New Zealand*, para. 9.6.

it could weaken its overall and average profitability. The Ministry believed that the opportunity to practise financially profitable reindeer husbandry could be undermined.¹¹

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

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

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

5.2 The author notes the State party's argument that a solution could have been found between the *siida* members that would have protected him as a herder with a small herd. He argues that this was only a theoretical possibility, as there would always be some members who would not accept such an agreement. He reiterates his arguments that it would not be possible to have a profitable operation with only 75 reindeer and that when the Sami Parliament considered the draft of the Reindeer Husbandry Act in September 2006, it supported the proposal to protect *siida* units with 200 or fewer reindeer in the event of a reduction, which was also supported by the Sami Reindeer Herders' Association. It was not supported by the Ministry and was thus not included in the Act. As such, the participation of the reindeer industry and the Sami Parliament had no impact on the content of the Act and cannot therefore be considered to fulfil the requirement of effective participation under article 27 of the Covenant. Clearly, the Sami Parliament and the Association are best placed to determine the interests of the Sami community and the reindeer husbandry industry. The author also argues that protecting *siida* units with fewer than 200 reindeer would have had limited consequences for the larger *siida* units. He notes that, in a 2012 report, a working group on the regulation of reindeer numbers in which several ministries, the Sami Parliament and the Association participated, found that in West Finnmark, where the Fålå district is located, 15 of the 157 *siida* shares had fewer than 200 reindeer before the culling orders were issued.

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

State party's additional observations

6.1 On 4 June 2020 and 3 November 2021, the State party submitted additional observations. It notes the author's claims that there was only a theoretical possibility of finding a solution within the *siida* because the reduction plan required the six affected *siida* shares to reach a unanimous decision. The State party maintains its position that the rule of

¹¹ The State party refers to Supreme Court of Norway, Case No. 2017/981, Judgment HR-2017-2428-A, 21 December 2017, paras. 80–82.

proportionate reduction is of a secondary nature, and that the internal self-government inherent in the Reindeer Husbandry Act provides realistic opportunities to influence how the burden of reduction should be distributed between the *siida* shares if the number of reindeer exceeds the maximum number permitted in the *siida*. The possibility for a *siida* to protect the smallest *siida* shares by setting an upper limit of reindeer per *siida* share requires only a simple majority of votes.

6.2 The State party argues that, in order for the author to expand his herd, someone else would have to reduce their own herd correspondingly. In such cases, where the author's interests are in direct conflict with the reindeer husbandry of the other *siida* shares in the district, the question is whether there is a reasonable and objective justification for the application of the limitation to the individual who claims to be adversely affected.¹² The State party disagrees that the decision to reduce the number of reindeer to 75 has made the author's reindeer husbandry unprofitable. It argues that in fact, the author will have a better financial outcome with 75 healthy and properly fed reindeer than with 116 malnourished reindeer. The State party does not dispute that the author is unlikely to be able to have reindeer husbandry as a primary source of income with 75 animals. However, it reiterates that the decision of proportionate reduction is temporary, as it applies only for the reduction period. Hence, the decision does not prevent the author from increasing his herd in the future. Whether there is room for future growth of the author's herd is a factual question that is not influenced by the time-limited decision. Such room could be created if some of the other *siida* shares reduced their herds, or if the *siida* shares use the possibilities of self-determination provided by the Reindeer Husbandry Act. The reindeer district to which the author belongs can, for example, change the district's usage rules to include a cap on the maximum number of reindeer per *siida* share, thereby allowing the author to increase his herd. Furthermore, it should be noted that the author is able to take part in the reindeer husbandry way of life to the same extent as his aunt was doing. The number of reindeer in his aunt's *siida* share for most of the 10 years preceding the author's acquisition of it in 2010 was fewer than 71 reindeer.

6.3 The State party stresses that, at the time of the culling orders, the author had submitted to the authorities that he had 116 reindeer in his herd for 2011/12. That was the only number available when the reduction process in the *siida* was initiated in February 2013, as the numbers for 2012/13 were not reported until 1 April 2013. The State party maintains that 116 was thus the correct number to use as the basis for the reduction. In any case, the question of whether the author had 116 or 150 reindeer cannot be decisive. The more important issue is that he had no legitimate expectation of increasing his herd from 71 animals in 2010, as the *siida* was already full. His subsequent increase to 150 and then to between 300 and 350 reindeer was unlawful and negatively affected the other herders in the district. The State party also stresses that there is no basis in the Covenant or elsewhere for a provision guaranteeing any reindeer owner a particular financial outcome. In a situation of overgrazing, such a provision could threaten reindeer husbandry for future generations, since it would subsequently be practicably impossible to reduce the number of reindeer to a sustainable level.

Third-party submission by the Sami Parliament of Norway, joined by the Sami Reindeer Herders' Association of Norway

7.1 On 3 June 2019, the Sami Parliament of Norway, joined by the Sami Reindeer Herders' Association of Norway, submitted a third-party submission on the complaint.¹³ The Sami Parliament is the elected and representative body for the Sami people, the Indigenous People of Norway. The Sami Reindeer Herders' Association is a non-governmental organization that represents Sami reindeer herders in Norway. The submission aims to explain the domestic decisions in the author's case in the light of the Committee's previous jurisprudence, the potential threats to the author's right to enjoy his own culture caused by the domestic legislation and the lack of effective participation in the decision-making process.

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

¹³ At the request of the Sami Parliament, the submission was prepared by professors of international law Martin Scheinin, Kirsti Strøm Bull and Geir Ulfstein.

7.2 In 2006, the Sami Parliament made the following submission to the authorities about amendments to the Reindeer Husbandry Act concerning the reduction of reindeer numbers: (a) the proposal had been sent to the Sami Parliament without the full details of the preparatory work concerning the law, and thus in violation of the State party's consultation obligations; (b) the Sami Parliament objected to the proposal that it would be for the State party authorities to unilaterally decide about the reindeer numbers and their reduction; and (c) the Sami Parliament proposed that, unless agreement could be reached within a *siida*, a minimum herd size of 200 animals per owner would apply before a proportional reduction was ordered to the number of animals beyond that minimum. The Sami Parliament referred specifically to the importance of enabling young reindeer owners to attain economic sustainability at the stage when they are establishing themselves as reindeer herders. However, the State party authorities decided to not follow that position. Consequently, the complaint results from the State party authorities' unilateral decisions.

7.3 The case primarily concerns the internal allocation of reindeer herd quotas between Sami herders. In Norway, reindeer herding as an economic activity is reserved exclusively for the Sami people. The complaint therefore, along with *Lovelace v. Canada*, *Kitok v. Sweden* and *Mahuika et al. v. New Zealand*, concerns the role of an individual or a group of individuals within the broader Indigenous community, rather than interference in traditional or typical Indigenous activities through competing use of traditional lands, as tolerated or authorized by the State party. In its general comment No. 23 (1994), the Committee recognized States parties' obligation to take measures to ensure the effective participation of members of minority communities in decisions which affect them (para. 7). In cases concerning external interference in traditional or typical Indigenous activities, the Committee has combined the requirement for effective participation with continued sustainability, upholding the right to continue to benefit from Indigenous economic activity. In *Poma Poma v. Peru*, the Committee's Views suggest a move towards applying a more demanding test of free, prior and informed consent when addressing the permissibility of interference. While that case concerned external interference in the economic activity of an Indigenous group, rather than internal allocation, it remains relevant. If the current test for permissibility of interference is free, prior and informed consent, then it is clear that the standard for a role for the Indigenous community itself in decisions concerning the internal allocation of a scarce resource cannot be lower than that applicable in respect of external interference.

7.4 It is highly instructive for the assessment of the present case that, in its most recent cases concerning article 27, the Committee has introduced the notion of internal self-determination as an aspect of the rights of an Indigenous People under articles 27 and 25, interpreted in the light of article 1. In doing so, the Committee explicitly relied upon the provisions of the United Nations Declaration on the Rights of Indigenous Peoples when interpreting the Covenant. In *Sanila-Aikio v. Finland*¹⁴ and *Käkkäläjärvi et al. v. Finland*,¹⁵ it established that the State party had violated article 25 of the Covenant when it intervened in the ongoing Sami Parliament elections of 2015 by ordering the inclusion of a relatively high number of individuals in the electoral rolls of that Parliament. In those cases, the Committee appeared to accept that there may be some room for interference by the State party, even in matters that fall under the Indigenous group's internal self-determination, but only when it is based on objective and reasonable criteria. The threshold for permissible State party interference in decision-making in matters pertaining to the internal self-determination of an Indigenous group, such as internal allocation of resources, must be higher than for external interference in the economic activities of an Indigenous group. There should be a presumption that the Sami Parliament has exclusive jurisdiction in such internal matters. The State party should be required to demonstrate that the interference is necessary to the extent that the matter has effects beyond the Sami community. The State party has failed to show why the default minimum herd size of 200 reindeer per owner was unacceptable.

7.5 As has been confirmed by the domestic courts, it is not economically sustainable to maintain a herd of only 75 reindeer when a family seeks to participate in reindeer herding as the main source of its subsistence. Any regulation should be designed in a way that supports

¹⁴ *Sanila-Aikio v. Finland* (CCPR/C/124/D/2668/2015).

¹⁵ *Käkkäläjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017).

the purpose of article 27, namely, to protect the minority community. Shielding a minimum number of reindeer from eventual cuts will more effectively protect the culture. It should be for the State party to show why such a measure is not feasible. The fact that the author is a young father, who together with his spouse wishes to continue the centuries-old tradition of reindeer herding, also transmitting this constitutive dimension of Sami culture to the next generation, supports the conclusion that the culling order is not based on considerations related to securing the continued viability of Sami reindeer herding and the continued welfare of the Sami as an Indigenous People.

State party's observations on the third-party submission

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

Issues and proceedings before the Committee

Consideration of admissibility

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

9.2 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.

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

Consideration of the merits

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

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

a violation of his rights under article 27 of the Covenant, as the author has not been denied the right to enjoy the Sami reindeer husbandry culture. It notes the State party's additional argument that the rule of proportionate reduction, as stipulated in the Reindeer Husbandry Act, served the interests of the affected *siidas* as it was necessary to reduce the number of reindeer in the *siida* because of overgrazing, and that there was a reasonable and objective justification for applying the reduction rule to the author. It also notes the State party's arguments that extensive consultations were held with the Sami community prior to the enactment of the Act and that there is a conflict between the asserted individual rights of the author and the parallel rights and interests of the other *siida* shares regarding the number of reindeer to be culled.

10.3 The Committee recalls that article 27 establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights that all persons are entitled to enjoy under the Covenant.¹⁶ In accordance with article 27, members of minorities groups shall not be denied the right to enjoy their culture and measures whose impact amounts to a denial of that right are incompatible with the obligations under article 27.¹⁷ The enjoyment of that right may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them. The protection of the rights enshrined in article 27 is directed towards ensuring the survival and continued development of the cultural identity of the minority concerned, thus enriching the fabric of society as a whole.¹⁸

10.4 The Committee notes that, in the present case, the author is a member of an Indigenous People within the meaning of article 27 of the Covenant who, as such, has the right to enjoy his own culture. It is undisputed that reindeer husbandry is an essential element of that culture.¹⁹ In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27 if they are an essential element of the culture of a community.²⁰ The Committee also recalls that, in the case of Indigenous Peoples, the enjoyment of their culture may relate to a way of life which is closely associated with their traditional lands, territories and resources, including such traditional activities as fishing and hunting, and that the protection of this right is directed towards ensuring the survival and continued development of the cultural identity of the minority concerned.²¹ Therefore, Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life.²² Furthermore, the Committee recalls its jurisprudence that the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; their relations to the land are a material and spiritual element which they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people.²³

10.5 The Committee notes that the author is directly affected by the regulation under the Reindeer Husbandry Act and the orders imposed on him to reduce to 75 the number of reindeer in his herd. It also notes that it is undisputed between the parties that the purpose of the reduction regulation in the Reindeer Husbandry Act is based on reasonable and objective aims, namely, to preserve ecologically, economically and culturally sustainable reindeer

¹⁶ General comment No. 23 (1994), para. 1.

¹⁷ *Mahuika et al. v. New Zealand*, para. 9.4. See also *Länsman et al. v. Finland* (CCPR/C/83/D/1023/2001), para. 10.1.

¹⁸ General comment No. 23 (1994), paras. 6.1 and 9, *Poma Poma v. Peru*, para. 7.2, and *Roy v. Australia* (CCPR/C/137/D/3585/2019), paras. 8.2 and 8.3.

¹⁹ See, for example, *Paadar et al. v. Finland*, para. 7.5.

²⁰ *Mahuika et al. v. New Zealand*, para. 9.3, and *Kitok v. Sweden*, para. 9.2.

²¹ General comment No. 23 (1994), paras. 3.2, 7 and 9, *Oliveira Pereira et al. v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.6, and *Poma Poma v. Peru*, para. 7.2.

²² *Oliveira Pereira et al. v. Paraguay*, para. 8.6, Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009), para. 36, and United Nations Declaration on the Rights of Indigenous Peoples, arts. 20, 26 (1) and 33.

²³ *Roy v. Australia*, para. 8.3, and *Agren et al. v. Sweden* (CERD/C/102/D/54/2013) para. 6.6.

husbandry. Nevertheless, the parties disagree as to the methods chosen for the reduction in the number of reindeer, and whether such methods were reasonable, justified and necessary. In this connection, the Committee notes the State party's argument that the proportionate reduction rule under the Reindeer Husbandry Act struck a fair balance between the interests of the smaller and the larger *siida* shares, and that the allocation of reindeer between the various *siida* shares is a zero-sum situation in which each reindeer added to the author's herd would result in a corresponding reduction of another family's herd. The Committee recalls that, in circumstances where the right of individuals to enjoy their own culture is in conflict with the exercise of parallel rights by other members of the minority group or of the minority as a whole, the Committee may consider: (a) whether the limitation in question is in the interests of all members of the minority; (b) whether there is reasonable and objective justification for its application to the individuals who claim to be adversely affected; and (c) whether the limitation is necessary for the continued viability and welfare of the minority as a whole.²⁴ In the present case, the Committee considers that the reduction policy was issued in the interest of the reindeer herding community as a whole, as it was issued because of overgrazing and in the interest of preserving ecologically, economically and culturally sustainable reindeer herding currently and in the future. The question before the Committee is therefore whether there is reasonable and objective justification for not exempting herders with a small number of reindeer, such as the author, from the reduction policy, and whether issuing the culling orders in question to herders like the author, who only had a small number of reindeer, was necessary for the continued viability and welfare of the community as a whole.

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

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

²⁴ *Mahuika et al. v. New Zealand*, para. 9.6, and *Kitok v. Sweden*, para. 9.8.

that in West Finnmark, 15 out of the 157 *siida* shares had fewer than 200 reindeer before the culling orders were issued and that consequently, exempting the small *siida* shares from the reduction policy would have had a limited impact on the community as a whole.

10.8 The Committee observes that, during the preparatory work on the Reindeer Husbandry Act, the Sami Parliament and the Sami Reindeer Herders' Association supported exempting herders with 200 or fewer reindeer from the reduction policy. The Sami Parliament and the Association have also endorsed this position in their third-party submission in the present case. The Committee notes that, in that submission, they also argued that the State party has failed to explain why the default minimum herd size of 200 reindeer per owner was not acceptable. The Committee also notes that the Sami Parliament argued its position by referring to the importance of enabling young reindeer owners to attain economic sustainability at the stage when they are establishing themselves as reindeer herders. The Committee further notes the Sami Parliament's and the Association's argument that the author is a young father who, together with his spouse, wishes to continue the centuries-old tradition of reindeer herding and to transmit this constitutive dimension of Sami culture to the next generation. According to the Sami Parliament and the Association, this supports the conclusion that the culling order is not based on considerations related to securing the continued viability of Sami reindeer herding and the continued welfare of the Sami as an Indigenous People. In this connection, the Committee notes that the author's argument that the Sami Parliament and the Association are best placed to determine the interests of the Sami community and the reindeer husbandry industry is consistent with the Committee's jurisprudence.²⁵

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

10.10 The Committee thus recognizes that the reduction regulation enacted in the Reindeer Husbandry Act was in pursuit of a legitimate aim, namely, to preserve ecologically, economically and culturally sustainable reindeer husbandry. However, taking the above considerations into account (see paras. 10.5–10.9), the Committee considers that the State party has not demonstrated that the methods chosen to implement said reindeer reduction policy in the present case, namely not exempting herders such as the author, who have 200 or fewer reindeer from the reduction policy, in accordance with the position of the Sami Parliament and the Sami Reindeer Herders' Association, was based on reasonable and objective justifications, nor has it demonstrated that not including such an exemption was necessary in order to ensure the continued viability and welfare of the Sami reindeer husbandry industry. The Committee therefore concludes that the facts before it reveal a violation of the author's rights under article 27 of the Covenant.

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

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 27 of the Covenant.

12. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to review the culling orders issued to the author, taking into account the Committee's findings in the present Views. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by

²⁵ *Sanila-Aikio v. Finland*, paras. 6.8–6.10, and *Käkkäläjärvi et al. v. Finland*, paras. 9.8–9.10.

reviewing the provisions of section 60 of the Reindeer Husbandry Act in order to ensure that they are in compliance with its obligations under article 27 of the Covenant.

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

Annex

[English only]

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

1. We have come to a different conclusion from the majority of the Committee, which found a violation of the author's rights under article 27 of the Covenant.
2. The author is a Sami reindeer herder and has been the leader of a *siida* unit since 2010 (paras 2.1 and 2.2 of the Committee's Views). He claims that, since his reindeer husbandry is economically marginal and in the establishment phase, he needs to build up the reindeer herd to achieve economically sustainable reindeer husbandry (para. 2.3). However, his aunt's *siida* share for most of the 10 years before he acquired it and took over as leader of a *siida* unit was fewer than 71 reindeer.
3. After consultations conducted in 2005 and 2006, the Government of Norway submitted a draft act to the Sami Parliament for review. The Sami Parliament considered that *siida* units with 200 or fewer reindeer should be protected in the event of a reduction in the number of reindeer, but the Government did not agree, as in the long-term, that could result in an industrial structure that would weaken the overall average profitability of the *siida* (para. 2.5). Ultimately, the Parliament of Norway chose a solution more in line with the industry's request for more self-governance and the need to protect established families for which reindeer husbandry was the primary income.
4. In June 2007, the Reindeer Husbandry Act was adopted, containing provisions on the number of reindeer per *siida* unit. A maximum number of reindeer was stipulated for each summer for the reindeer herding districts, based on the grazing resources available to the *siida*, as well as for the various winter *siidas*. There would be herd reduction in cases where the number of reindeer exceeded the maximum established, the *siida* being obliged to prepare a culling plan. In the absence of such a plan, each *siida* unit must reduce its excess number of animals proportionally. The Reindeer Husbandry Board is responsible for ensuring the reduction is carried out (para. 2.4).
5. In February 2013, the Reindeer Husbandry Board ordered the author to cull the spring herd of his *siida* unit from 116 to 75 reindeer by March 2015 (para. 2.7). Three of the seven members of the Board that ordered the proportionate reduction are Sami. The author, while entering into an agreement with other reindeer herders for the transfer of the majority of his reindeer to another district by the end of 2019 (para. 4.1), appealed the culling order. Both the Board and the Ministry of Agriculture and Food dismissed his appeal. The author then brought an action against the State before the District Court claiming that the Ministry's cull order of March 2014 was invalid (para. 2.8).
6. Both the District Court, in 2016, and the Court of Appeal, in 2017, held that the cull order was invalid, the latter considering that it violated article 27 of the Covenant (the author's right to enjoy his own culture) (para. 2.9). However, in December 2017, the Supreme Court found differently, noting that: (a) the Reindeer Husbandry Act had been enacted to ensure ecologically, economically and culturally sustainable reindeer husbandry based on the Sami culture, tradition and customs in the interest of herders and society in general; (b) the reduction in the number of reindeer had been ordered in the interest of the reindeer herders due to problems with overgrazing; (c) the Sami Parliament had agreed that the number of reindeer had to be reduced; and (d) proportionate reduction maintained the reindeer herders' interests as a group, since the regulation affected everyone, with owners of the largest herds having to cull the highest number of reindeer. The Supreme Court found that the reduction system met the criteria of being objective, reasonable and necessary to maintain the interests of the reindeer herders.
7. We consider this to be a reasonable decision, taken to attain a legitimate purpose. According to the State party, the pressure on the industry and the grazing land from existing reindeer herders and individuals wanting to enter the industry has been high for decades and

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

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

9. In 2010, when the author took over as a leader of a *siida* unit, there was already no room for further growth of *siida* shares (para. 4.5). If the author expands his herd, this will likely have a detrimental impact on other families' established way of life (paras. 4.7 and 6.2). Thus the proportionate reduction is necessary and strikes a fair balance between the interests of the smaller and the larger *siida* shares (para. 4.9). Through the Reindeer Husbandry Act, Parliament made the reduction provision "secondary in nature", as it only applies insofar as a district has not used the opportunities of internal self-governance for the reindeer herders to make alternative arrangements (paras. 4.3 and 10.6). The State party has made clear that the Reindeer Husbandry Act inherently prioritizes self-governance for Sami reindeer herders, as it allows *siida* shares the flexibility to distribute the allocation of reindeer and any subsequent culling orders by means of a simple majority vote (paras. 4.8, 6.1 and 10.6).

10. The parties agree that a framework is necessary to manage and sustain reindeer husbandry. Parliament agreed to the need for a reduction to attain a valid legislative objective. Furthermore, during seven prior consultations, the Sami Parliament was thoroughly consulted by the State party with respect to the means to be applied. In these circumstances, we find the Government's action reasonable and well-grounded and find no violation of the author's rights under article 27 of the Covenant. The majority relied on a third-party submission reflecting the interests of the Sami Parliament and herders themselves. However, in the absence of scientific information countering the State party's arguments, we consider the latter's position more able to offer sustainability to the reindeer husbandry industry, a vital aspect of Sami culture. It would be deeply regrettable for the Committee's Views to have a negative effect on such sustainability while aiming at preserving Sami culture, tradition and customs.
