

## HUMAN RIGHTS COMMITTEE

### Länsman et al. v. Finland

Communication No. 671/1995

30 October 1996

CCPR/C/58/D/671/1995\*

### VIEWS

*Submitted by: Jouni E. Länsman et al. [represented by counsel]*

*Victims: The authors*

*State party: Finland*

*Date of communication: 28 August 1995 (initial submission)*

*Date of decision on admissibility: 14 March 1996*

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

Meeting on 30 October 1996,

Having concluded its consideration of communication No. 671/1995 submitted to the Human Rights Committee on behalf of Messrs. Jouni E. Länsman et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, their counsel and the State party,

Adopts the following:

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication (dated 28 August 1995) are Jouni E. Länsman, Jouni A. Länsman, Eino A. Länsman and Marko Torikka, all members of the Muotkatunturi Herdsmen's Committee. The authors claim to be victims of a violation by Finland of article

27 of the International Covenant on Civil and Political Rights. They are represented by counsel.

### The facts as submitted by the authors

2.1 The authors are reindeer breeders of Sami ethnic origin; they challenge the plans of the Finnish Central Forestry Board to approve logging and the construction of roads in an area covering about 3,000 hectares of the area of the Muotkatunturi Herdsmen's Committee. The members of the Muotkatunturi Herdsmen's Committee occupy areas in the North of Finland, covering a total of 255,000 hectares, of which one fifth is suitable for winter herding. The 3,000 hectares are situated within these winter herding lands.

2.2 The authors point out that the question of ownership of the lands traditionally used by the Samis remains unsettled.

2.3 The activities of the Central Forestry Board were initiated in late October 1994, but stopped on 10 November 1994 by an injunction of the Supreme Court of Finland (Korkein oikeus). According to the authors, a representative of the Central Forestry Board has recently stated that the activities will resume before the winter; they express concern that the logging will resume in October or November 1995, since the injunction issued by the Supreme Court lapsed on 22 June 1995.

2.4 The disputed area is situated close to the Angeli village near the Norwegian border, and to the Muotkatunturi Herdsmen's Committee's slaughterhouse and location for annual roundup of reindeer. The authors affirm that some 40 per cent of the total number of the reindeer owned by the Muotkatunturi Herdsmen's Committee feed on the disputed lands during winter. The authors observe that the area in question consists of old untouched forests, which means that both the ground and the trees are covered with lichen. This is of particular importance due to its suitability as food for young calves and its utility as "emergency food" for elder reindeer during extreme weather conditions. The authors add that female reindeer give birth to their calves in the disputed area during springtime, because the surroundings are quiet and undisturbed.

2.5 The authors note that the economic viability of reindeer herding continues to decline, and that Finnish Sami reindeer herders have difficulties competing with their Swedish counterparts, since the Swedish Government subsidizes the production of reindeer meat. Moreover, traditional Finnish Sami reindeer herders in the North of Finland have difficulties competing with the reindeer meat producers in the South of the Sami Homeland, who use fencing and feeding with hay, methods very distinct from the nature-based traditional Sami methods.

2.6 The authors observe that logging is not the only activity with adverse consequences for Sami reindeer herding. They concede that the dispute concerns a specific geographic area and the logging and construction of roads in the area. However, they believe that other activities, such as quarrying, that have already taken place, and such logging as has taken place or will take place, as well as any future mining (for which licences have already been

granted by the Ministry of Trade and Industry), on the total area traditionally used by the Samis, should be taken into consideration when considering the facts of their new case. In this context, the authors refer to the Central Forestry Board's submission to the Inari Court of First Instance (Inarin kihlakunnanoikeus) of 28 July 1993, where the Board expressed its intention of logging, by the year 2005, a total of 55,000 cubic metres of wood from 1,100 hectares of forests in the Western parts of the winter herding lands of the Muotkatunturi Herdsmen's Committee. The authors observe that logging has already been carried out in other parts of the winter herding lands, in particular in the Paadarskaidi area in the Southeast.

2.7 The authors reiterate that the situation is very difficult for Samis in the North of Finland, and that any new measure causing adverse effects on reindeer herding in the Angeli area would amount to a denial of the local Samis' right to enjoy their own culture. In this context, the authors invoke paragraph 9.8 of the Views in case No. 511/1992, which they interpret as a warning to the State party regarding new measures that would affect the living conditions of local Samis.

2.8 As to the requirement of exhaustion of domestic remedies, the authors filed a complaint, invoking article 27 of the Covenant, with the Inari Court of First Instance (Inarin kihlakunnanoikeus). The authors asked the Court to prohibit any logging or construction of roads on a limited geographic area. The Court declared the case admissible but decided against the authors on the merits on 20 August 1993. According to the Court, the disputed activities would have caused some adverse effects for a limited period of time, but only to a minor degree.

2.9 The authors then appealed to the Rovaniemi Court of Appeal (Rovaniemen hovioikeus) which, after oral hearings, delivered judgment on 16 June 1994. The Appeal Court found that the adverse consequences of the disputed activities were much more severe than the Court of First Instance had held. Still, two judges of the three-member panel came to the conclusion that the adverse effects for reindeer herding did not amount to a "denial of right to enjoy their culture" within the meaning of article 27 of the Covenant. The Court of Appeal considered that it had not been proven "that logging in the land specified in the petition and road construction ... would prevent them from enjoying in community with other members of their group the Sami culture by practicing reindeer herding". The third judge dissented, arguing that logging and construction of roads should be prohibited and stopped. The authors sought leave to appeal before the Supreme Court (Korkein oikeus), pointing out that they were satisfied with the establishment of the facts by the Court of Appeal, and asking the Supreme Court to review only the issue of whether the adverse consequences of the activities amounted to a "denial" of the authors' rights under article 27 of the Covenant. On 23 September 1994, the Supreme Court granted leave to appeal, without ordering interim measures of protection. On 10 November 1994, however, it ordered the Central Forestry Board to suspend the activities that had been initiated in late October 1994. On 22 June 1995, the Supreme Court confirmed the Court of Appeal's judgment in its entirety and withdrew the interim injunction. The authors contend that no further domestic remedies are available to them.

### The complaint

3.1 The authors claim that the facts as described violate their rights under article 27, and invoke the Committee's Views on the cases of Ivan Kitok v. Sweden (communication No. 197/1985), Ominayak v. Canada (communication No. 167/1984) and Ilmari Länsman et al. v. Finland (communication No. 511/1992), as well as ILO Convention No. 169 on the rights of indigenous and tribal people in independent countries, the Committee's General Comment No. 23[50] on article 27, and the United Nations Draft Declaration on Indigenous Peoples.

3.2 Finally, the authors, who contend that logging and road construction might resume in October or November 1995 and is therefore imminent, request interim measures of protection under rule 86 of the rules of procedure, so as to prevent irreparable damage.

#### Further submissions by the parties

4.1 On 15 November 1995, the communication was transmitted to the State party under rule 91 of the Committee's rules of procedure. Pursuant to rule 86 of the rules of procedure, the State party was requested to refrain from adopting measures which would cause irreparable harm to the environment which the authors claim is vital to their culture and livelihood. The State party was requested, if it contended that the request for interim protection was not appropriate in the circumstances of the case, to so inform the Committee's Special Rapporteur for New Communications and to give reasons for its contention. The Special Rapporteur would then reconsider the appropriateness of maintaining the request under rule 86.

4.2 By further submission of 8 December 1995, the authors note that the Upper Lapland Branch of the Central Forestry Board started logging in the area specified in the present communication on 27 November 1995. The logging activities are scheduled to continue until the end of March 1996: the target is to cut some 13,000 cubic metres of wood. Between 27 November and 8 December 1995, some 1,000 cubic metres had been cut over an area covering 20 hectares. Given this situation, the authors request the Committee to reiterate the request under rule 86 and urge the State party to discontinue logging immediately.

4.3 On the other hand, a group of Sami forestry officials from the Inari area who earn their living from forestry and wood economy, by submission of 29 November 1995 addressed to the Committee, contend that forestry as practiced today does not hamper reindeer husbandry, and that both reindeer husbandry and forestry can be practiced simultaneously in the same areas. This assessment was confirmed by the Supreme Court of Finland in a judgment of 22 June 1995. If forestry activities in the Inari area were to be forbidden, Sami groups practicing two different professions would be subject to unequal treatment.

4.4 In a submission dated 15 December 1995, the State party contends that interim measures of protection should be issued restrictively, and only in serious cases of human rights violations where the possibility of irreparable damage is real, e.g. when the life or physical integrity of the victim is at stake. In the State party's opinion, the present communication does not reveal circumstances pointing to the possibility of irreparable damage.

4.5 The State party notes that the present logging area covers an area of not more than 254

hectares, out of a total of 36,000 hectares of forest owned by the State and available for reindeer husbandry to the Muotkatunturi Herdsmen's Committee. This area includes the surface of the Lemmenjoki National Park, which obviously is off limits for any logging activity. The logging area consists of small separate surfaces treated by "seed tree felling", for natural regeneration. "Virgin forest areas" are left untouched in between the logged surfaces.

4.6 The State party notes that the Finnish Central Forestry Board had, in a timely manner and before beginning logging activities, negotiated with the Muotkatunturi Reindeer Husbandry Association, to which the authors also belong; this Association had not opposed the logging plans and schedule. The letter referred to in paragraph 4.3 above demonstrates, to the State party, the need for coordination of various and diverging interests prevalent in the way of life of the Sami minority. The State party finally observes that some of the authors have logged their privately owned forests; this is said to demonstrate the "non-harmfulness" of logging in the area in question.

4.7 In the light of the above, the State party regards the request under rule 86 of the rules of procedures as inappropriate in the circumstances of the case, and requests the Committee to set aside the request under rule 86. Notwithstanding, it undertakes not to elaborate further logging plans in the area in question, and to decrease the current amount of logging by 25 per cent, while awaiting the Committee's final decision.

4.8 The State party concedes that the communication is admissible and pledges to formulate its observations on the merits of the claim as soon as possible.

#### The Committee's admissibility decision

5.1 During its 56th session, the Committee considered the admissibility of the communication. It noted the State party's argument that the request for interim measures of protection in the case should be set aside, and that the communication met all admissibility criteria. It nonetheless examined whether the communication met the admissibility criteria under articles 2, 3, and 5, paragraphs 2(a) and (b), of the Optional Protocol, concluded that it did, and that the authors' claim under article 27 should be examined on its merits.

5.2 On 14 March 1996, therefore, the Committee declared the communication admissible and set aside the request for interim measures of protection.

#### State party's observations on the merits and counsel's comments thereon

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party supplements and corrects the facts as presented by the authors. It recalls that part of the Muotkatunturi Herdsmen's Committee's herding area belongs to the Lemmenkoji Natural Park, an area of pine-dominated forest suitable for reindeer herding during winter time. As to the consultation process between National Forest and Park Service (hereafter NFPS - formerly called the Central Forestry Board) and local Sami reindeer herders, it notes that the representatives of the NFPS had contacted the chairman of the reindeer owners' association,

J.S., who in turn invited the representatives of the NFPS to the extraordinary meeting of the Muotkatunturi Herdsmen's Committee on 16 July 1993. Planned logging activities were discussed and amendments agreed upon during the meeting: i.e. reverting to use of winter roads and exclusion of the northern part of the logging area. The records of the Inari District Court (28 July 1993) show that two opinions were presented during the meeting: one in support of and one against the authors. The Muotkatunturi Herdsmen's Committee did not make statements directed against the NFPS.

6.2 The State party further recalls that some Sami are forest owners and practice forest management, whereas others are employed by the NFPS in functions related to forest management. It emphasizes that the authors' comparison of surface areas to be logged is not illustrative, as it does not relate to forest management practices. Instead, it would be preferable to compare plans of the NFPS with plans for logging of private forests in the Angeli area: thus, the NFPS plans logging activities covering 900 hectares by the year 2005, whereas the regional plan for private forests of the Angeli area (years 1994-2013) includes forest regeneration of 1,150 ha by using the seed tree method.

6.3 The State party recalls that the authors' claims were thoroughly examined by the domestic courts (i.e. the Inari District Court, the Rovaniemi Court of Appeal and the Supreme Court). At every instance, the court had before it extensive documentation, on the basis of which the case was examined *inter alia* in the light of article 27 of the Covenant. All three instances rejected the authors' claims explicitly by reference to article 27. The State party adds that the requirements of article 27 were consistently taken into account by the State party's authorities in their application and implementation of the national legislation and the measures in question.

6.4 In the above context, the State party contends that, given that the authors conceded before the Supreme Court that the Court of Appeal of Rovaniemi had correctly established the facts, they are in fact asking the Committee to assess and evaluate once again the facts in the light of article 27 of the Covenant. The State party submits that the national judge is far better positioned than an international instance to examine the case in all of its aspects. It adds that the Covenant has been incorporated into Finnish law by Act of Parliament, and that its provisions are directly applicable before all Finnish authorities. There is thus no need to argue, as the authors chose to do, that the Finnish courts refrain from interpreting the Covenant's provisions and to wait for the Committee to express itself on "borderline cases and new developments". In the same vein, there is no ground for the authors' argument that the interpretation of article 27 of the Covenant by the Supreme Court and Court of Appeal is "minimalist" or "passive".

6.5 The State party acknowledges that the Sami community forms an ethnic community within the meaning of article 27 of the Covenant, and that the authors, as members of that community, are entitled to protection under the provision. It reviews the Committee's jurisprudence on article 27 of the Covenant, including the Views on cases Nos. 167/1984 (B. Ominayak and members of the Lubicon Lake Band v. Canada), 197/1985 (Kitok v. Sweden) and 511/1992 (I. Länsman v. Finland) and concedes that the concept of "culture" within the meaning of article 27 covers reindeer husbandry, as an essential component of the Sami

culture.

6.6 The State party also admits that "culture" within the meaning of article 27 provides for protection of the traditional means of livelihood for national minorities, in so far as they are essential to the culture and necessary for its survival. Not every measure or its consequences, which in some way modify the previous conditions, can be construed as a prohibited interference with the right of minorities to enjoy their own culture. This line of reasoning has been followed by the Parliamentary Committee for Constitutional Law, which has stated that Finland's obligations under international conventions mean that reindeer husbandry exercised by the Sami must not be subjected to unnecessary restrictions.

6.7 The State party refers to the Committee's General Comment on article 27<sup>1</sup>, which acknowledges that the protection of rights under article 27 is directed to ensuring "the survival and continued development of the cultural, religious and social identity of the minorities concerned" (paragraph 9). It further invokes the ratio decidendi of the Committee's Views on case No. 511/1992 (I. Länsman et al. v. Finland), where it was held that States parties may understandably wish to encourage economic development and allow economic activity, and that measures which have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a violation of article 27. The State party argues that the present communication is in many respects similar to case No. 511/1992, i.e. (1) the responsibility for the contested activities lies once again with the State party, (2) the contested measures merely have a certain limited impact; (3) economic activities and conduct of reindeer husbandry have been reconciled in an appropriate manner; and (4) earlier logging and future logging plans were explicitly taken into consideration in the resolution of the case by the domestic courts.

6.8 In addition, the State party points to the solution of a comparable case by the Supreme Court of Norway, where submersion of a small land area after construction of a hydroelectric dam had been challenged by local Samis. In that case, too, the decisive point for the Supreme Court was the factual extent of the interference with the interests of the local Sami, which was deemed to be too small to raise issues of minority protection under international law. The Supreme Court's reasoning was subsequently endorsed by the European Commission of Human Rights. The State party concludes that the Committee's case law shows that not all measures imputable to the State amount to a denial of the rights under article 27: this principle is said to apply in the present case.

6.9 Still in relation to the authors' argument that different rights and interests cannot be reconciled, and that the right of the Sami to practice reindeer herding should have precedence over the practice of other rights, such as the right to log forests, the State party asserts that the interests of both forestry and reindeer management can be and have been taken into account and reconciled when measures related to forestry management were or are being planned. This is generally done by the NFPS. The reconciliation is not only possible in the area referred to by the authors and in the entire region in which reindeer husbandry is practised, but it is also a significant issue, as reindeer husbandry is practised in the entire area inhabited by the Sami. It is noted that this type of reconciliation was explicitly approved by the Committee in its Views on case No. 511/1992 (paragraph 9.8),

where it was admitted that "economic activities must, in order to comply with article 27, be carried out in a way that enables the authors to continue to benefit from reindeer husbandry". The State party adds that measures related to forestry management can benefit the reindeer husbandry in many cases, and that many herdsmen simultaneously practice forestry.

6.10 In the State party's view, the authors merely raise before the Committee the same issues they had been raising before the domestic courts: i.e. what types of measures in the areas concerned trigger the "threshold" beyond which measures must be regarded as a "denial", within the meaning of article 27, of the Samis' right to enjoy their own culture. Before the local courts, the impairments to reindeer husbandry caused by logging and road construction were deemed to be below this threshold. In the State party's opinion, the authors have failed to adduce new grounds which would enable the Committee to assess the "threshold" issue in any other way than the domestic courts.

6.11 In this context, the State party argues that if the concept of "denial" within the meaning of article 27 is interpreted as widely as by the authors, this would in fact give the Sami reindeer herders the right to reject all such activities which are likely to interfere with reindeer husbandry even to a small extent: "[t]his kind of right of veto with respect to small-size reasonable legal activities of the landowners and other land users would be simultaneously given to the herdsmen practicing husbandry and would thus have a significant influence on the decision-making system." Simultaneously, legislation governing the exploitation of natural resources as well as the existing plans for land use would become "almost useless". This, the State party emphasizes, cannot be the purpose and object of the Covenant and of article 27. It should further be noted that since the Samis' right to practice reindeer husbandry is not restricted to the State-owned area, the Committee's decision will have serious repercussions on how private individuals may use and exploit land they own in the area of reindeer husbandry.

6.12 In the State party's opinion, the Committee's insistence on the principle of "effective participation of members of minority communities in decisions which affect them"<sup>2</sup>, principle which was reiterated in the Views on case No. 511/1992, was fully applied in the instant case. The area in which interests of forestry management and reindeer husbandry co-exist and possibly conflict forms part of the area of the Muotkatunturi Herdsmen's Committee (the legal entity responsible for matters relating to reindeer husbandry). The State party and the Herdsmen's Committee have had continuous negotiation links, in a framework in which interests of forestry and reindeer husbandry are reconciled. The State party contends that the experiences with this negotiation process have been good, and that it guarantees the Samis' right to conduct reindeer husbandry in accordance with article 27. The NFPS has been in constant contact with the Muotkatunturi Herdsmen's Committee, of which the authors are members.

6.13 The State party explains that reindeer management has been partly transformed into an activity that uses the possibilities offered by forestry management. Herdsmen use roads constructed for the purpose of forestry management: it is recalled that in the privately owned forests in the area of the Muotkatunturi Herdsmen's Committee, logging has been carried out by those practising reindeer husbandry. Furthermore, the State party notes, forestry

management practised by Samis does not differ from the way other private forest owners practice forestry management. If the forestry and logging methods used in areas administered by the NFPS are compared with the logging methods used in privately owned forests and by Samis, the lighter methods of forestry management used by the NFPS and manual logging are more mindful of the interests of reindeer husbandry than logging in privately owned forests carried out by machines. The NFPS intends to carry out manual logging, a more natural method than the mechanical logging which was carried out in privately owned forests in the Angeli area in the winter of 1993-1994. Manual logging is moreover closer to the traditional way of life and the culture of the Sami, and its effects on them thus lighter.

6.14 The State party concludes that the authors' concern over the future of reindeer husbandry have been taken into account in an appropriate way in the present case. While the logging and tracks in the ground will temporarily have limited adverse effects on the winter pastures used by the reindeer, it has not been shown, in the State party's opinion, that the consequences would create considerable and long-lasting harm, which would prevent the authors from continuing reindeer husbandry in the area under discussion on its present scale. The authors are not, accordingly, denied their right to enjoy their own culture within the meaning of article 27 of the Covenant.

7.1 In their comments, the authors begin by noting that logging in the Pyhäjärvi area, a part of the area specified in their complaint, was completed in March 1996. Adverse consequences of the logging for reindeer are said to be mostly of a long-term nature. The authors and other reindeer herdsman have however already observed that the reindeer use neither the logging area nor "virgin forest areas" in between the logging areas as pasture. During the winter of 1996, therefore, a considerable part of the winter herding lands of the Muotkatunturi Herdsmen's Committee has been unaccessible for the reindeer. This has caused the reindeer herders much extra work and additional expenses, in comparison to previous years.

7.2 According to the authors, some of the negative consequences of the logging will only materialize after several years or even decades. For example, one particularly difficult winter during which a solid ice layer would prevent reindeer from digging lichen through the snow may cause the starvation of many reindeer, because of the absence of their natural emergency resource, i.e. the lichen growing on old trees. If storms send down the remaining trees, there is a distinct danger of large areas becoming totally treeless, thereby causing a permanent reduction in the surface of winter herding lands for the Muotkatunturi Herdsmen's Committee.

7.3 Counsel observes that because the economic benefit from reindeer herding is low, many reindeer herdsman have had to look for additional sources of income. This development has been accelerated as most herding committees have been forced to cut the number of their herds. The necessity to reduce the herds has been caused by the scarcity of herding lands and the poor condition of existing, over-used herding lands. In such a situation, suitable winter herding areas are a truly critical resource, which determine the scale of reductions in the number of reindeer belonging to each herdsman's committee. The authors themselves

developed other economic activities besides reindeer herding in order to survive. They work as butchers for other herdsman's committees, work for private local landowners or conduct small-scale logging within their own private forests. All, however, would prefer to work solely in reindeer herding.

7.4 As to the extent of the logging already carried out, counsel transmits four photographs, including aerial photographs, which are said to provide a clear understanding of the nature and impact of the logging: very few trees remain in logged areas of up to 20 hectares, and all old trees, rich with lichen, have been cut.

7.5 The authors dismiss as misleading the State party's observations on the magnitude and nature of the logging, as the 254 ha mentioned by the State party relate only to logging already completed. The NFPS however plans to continue logging in the area specified in the complaint. If comparisons are made with a larger area, the authors recall the long-lasting and extensive logging, in Paadarskaidi, another part of the winter herding area of the Muotkatunturi Herdsmen's Committee. The consequences of logging activities in Paadarskaidi are said to be alarming, since the reindeer simply have abandoned this area. The authors also challenge the State party's comments on the logging methods and submit that so-called seed-tree felling is also harmful for reindeer herding, as the animals do not use such forests for a number of reasons. In addition, there is the danger that storms fell the seed trees and the area gradually becomes treeless.

7.6 Counsel emphasizes that if two of the authors have sought additional income from forestry, this has not been of their free choice and in no way indicates that logging would be part of the Sami way of life. He criticizes the State party's observations which use this argument against the authors, rather than taking it as a serious indicator of developments which endanger the Sami culture and the Sami way of life. It is submitted that the State party's attempt to explain "manual logging" as being close to the traditional way of life and culture of the Sami is totally unfounded and distorts the facts.

7.7 The authors point specifically to the magnitude of the different logging projects in the area. Of a total of 255,000 ha area of the Muotkatunturi Herdsmen's Committee, some 36,000 ha are forests administered by the NFPS. The most suitable winter herding lands of the Muotkatunturi Herdsmen's Committee are located within these State-administered areas, deep in the forests. Privately owned forests cover some 14,600 ha and are owned by 111 separate owners. Most of the privately owned forests do not exceed 100 ha and are typically located along the main roads. They are accordingly, much less suitable for reindeer herding as for example the strategically important winter herding areas identified by the authors in the present case.

7.8 The authors challenge the State party's affirmation that there was "effective participation" of the Muotkatunturi Herdsmen's Committee and themselves in the negotiation process. Rather, they assert, there was no negotiation process and no real consultation of the local Sami when the State forest authority prepared its logging plans. At most, the Chairman of the Muotkatunturi Herdsmen's Committee was informed of the logging plans. In the authors' opinion, the facts as established by the Finnish courts do not support the State

party's contention. The Sami furthermore are generally dissatisfied with the way the State forest authorities exercise their powers as "landowners". On 16 December 1995, the Sami Parliament discussed the experiences of Sami consultation in relation to logging plans by the State party forest authorities. The resolution adopted notes, *inter alia*, that it is "[t]he opinion of the Sami Parliament that the present consultation system between the Central Forestry Board and reindeer management does not function in a satisfactory way...".

7.9 As far as logging in the Angeli area is concerned, the authors note that, even under the terms of the State party's submission, the "negotiations" only proceeded after the authors had instituted court proceedings in order to prevent the logging. The local Sami "had become coincidentally aware" of existing logging plans, upon which the authors instituted court proceedings. The authors contend that what the State party refers to as "negotiations" with local reindeer herdsman amounts to little more than invitations extended to the chairmen of the herdsman's committees to annual forestry board meetings, during which they are informed of short-term logging plans. This process, the authors emphasize, involves no real consultation of the Sami. They express their desire to have a more significant influence on the decision-making processes leading to logging activities within their homelands, and refute the State party's view on the perceived good experiences with the existing consultation process (see paragraph 6.12 above).

7.10 Concerning the State party's argument that the authors in fact seek a re-evaluation, by the Committee, of evidence already thoroughly examined and weighed by the local courts, the authors affirm that the only contribution they seek from the Committee is the interpretation of article 27, not any "reassessment of the evidence", as suggested by the Government. They dismiss as irrelevant the observations of the State party on the role of the national judge (see paragraph 6.4 above).

7.11 As to the State party's comments referred to in paragraph 6.7 above, the authors largely agree with the former's points relating to the Government's responsibility for interference with Sami rights and the weighing of all relevant activities and their impact by the local courts. They strongly disagree with the State party's second point, namely that the measures agreed to and carried out only have a limited impact. In the first *Länsman* case, the Committee could limit its final assessment to activities which had already been concluded. The present case not only concerns such logging as has already been conducted, but all future logging within the geographical area specified in the complaint. Thus, the winter herding lands in question in the present case are of strategical importance to the local Sami: logging causes long-lasting or permanent damage to reindeer herding, which does not end when the activity itself is concluded. Therefore, the "limited impact" of quarrying on Mt. Riutusvaara, which was at the basis of the first case<sup>3</sup>, cannot be used as a yardstick for the determination of the present case, where the adverse consequences of logging are said to be of an altogether different magnitude.

7.12 The authors equally disagree with the State party's contention that there was an appropriate reconciliation between the interests of reindeer herdsman and economic activities, noting that the logging plans were drawn up without the authors' participation or of the local Sami in general.

7.13 The authors challenge the State party's assessment of the impact of the logging activities already carried out on the author's ability to continue reindeer herding. They believe that the logging which has taken place and, more so, further envisaged logging, will prevent them from continuing to benefit from reindeer husbandry. The Government's optimistic assessment is contrasted with that of the Rovaniemi Court of Appeal, which admitted that the logging would cause "considerable" and "long-lasting" harm to the local Sami. However, the domestic courts did not prohibit the planned logging activities, because they set the threshold for the application of article 27 in the necessity of "giving up reindeer herding", and not in terms of "continuing to benefit from reindeer husbandry"<sup>4</sup>.

7.14 In addition to the above, the authors provide information on recent developments concerning Sami rights in Finland. While the development has been positive with respect to constitutional amendments and the formally recognized rule of the Sami Parliament, in has been negative and insecure in other respects, i.e. in relation to the economic well-being of the Sami who live mostly from reindeer herding and associated activities. The authors further refer to a case currently pending before the Supreme Administrative Court of Finland, relating to mining claims staked by Finnish and foreign companies within the Sami homeland. The principal legal basis for the administrative appeals by Sami in this case was article 27 of the Covenant; by decision of 15 May 1996, the Supreme Administrative Court quashed 104 claims which had previously been approved by the Ministry for Trade and Industry, and referred the companies' claim applications back to the Ministry for reconsideration. A decision on the merits of the case remains outstanding.

7.15 The authors conclude that, overall, the logging already conducted by the State party's forestry authorities within the area specified in the communication has caused "immediate adverse consequences to the authors, and to the Sami reindeer herdsman in the Angeli area and the Muotkatunturi Herdsmen's Committee in general". The logging will, and further logging envisaged by the State party's authorities would, result in considerable, long-lasting and even permanent adverse effect to them. To the authors, this conclusion has been well documented and also been confirmed by the judgments of the Rovaniemi Court of Appeal and of the Supreme Court in the case.

8.1 In additional comments dated 27 June 1996, the State party dismisses as groundless the authors' explanations concerning the perceived economic unsuitability of some parts of the logging area. It notes that as far as the possibility of loss of reindeer calves after the harsh winter of 1996 is concerned, possible losses are due to the exceptionally late arrival of spring and the deep cover of snow which has lasted an unusually long time. The situation has been identical for the whole reindeer herding area, and since losses are expected all over the reindeer herding area, supplementary feeding of reindeer has been increased accordingly. The State party observes that it is not measures related to forestry management, but the extent of reindeer management that has been the reason for the need to reduce the number of reindeer; continuous over-grazing of herding areas is a well-known fact. Finally, the State party considers it to be "self-evident" that selective seed tree felling is a milder procedure than clear felling.

8.2 As regards logging conducted by the authors themselves, the State party notes that

private landowners have independent authority in matters concerning the logging of their own forests. It would be difficult to understand that reindeer owners would carry out logging if its consequences for reindeer herding and for Sami culture were as harmful as the authors contend.

8.3 The State party reaffirms, once again, that the processes through which reindeer associations or herdsman participate in decisions affecting them are effective. The very issue of "effective participation" was discussed in a meeting between the NFPS, the Association of Herdsmen's Committees and different herdsman's committees on 19 February 1996 in Ivalo. In this meeting, the negotiation system described by the State party in its submission under article 4(2) of the Optional Protocol was considered useful. The State party also argues that contrary to the authors' assertion, the Muotkatunturi Herdsmen's Committee did not react negatively to the plans for logging initially submitted by the NFPS. The State party regrets that the authors have tended to invoke its comments and observations only partially, thereby distorting the true content of the Finnish Government's remarks.

8.4 As to the impact of logging activities on the authors' ability to carry out reindeer herding, the State party once more refers to the reasoning of the Rovaniemi Court of Appeal, which concluded that it had not "been proven that logging in the land specified in the petition and road construction for any other reasons mentioned by [the authors] would prevent them from enjoying, in community with other members of their group, the Sami culture by practicing reindeer herding". For the State party, this conclusion is fully compatible not only with the wording of article 27 of the Covenant but also paragraphs 9.6 and 9.8 of the Committee's Views in the first Länsman case: accordingly, these measures do not create such considerable and long-lasting harm to prevent the authors from continuing reindeer herding even temporarily.

9.1 In additional comments dated 1 July 1996, the authors take issue with some of the State party's observations referred to in paragraph 8.1 above. In particular, they challenge the Government's assertion that selective seed tree felling is a milder procedure than clear felling, and submit that in the extreme climatic conditions of the area in question, so-called "selective felling", which leaves no more than 8-10 trees per hectare, has the same consequences as clear felling. Moreover, the negative effect on reindeer herding is the same due to the growing impact of storms, the remaining trees might fall.

9.2 The authors submit that if the Government invokes the argument that the effects of selective cutting are milder than in the case of clear felling, the only conclusion should be that all further logging in the area in question should be postponed until objective and scientific findings show that the forest in the area already logged - the Pyhäjärvi area - has recovered. The authors further note that the Government's submission is patently mistaken if it states that "logging does not concern the Pyhäjärvi winter feeding area", since the area already logged is called "Pyhäjärvi" even by the NFPS itself and is located in the winter feeding area of the Muotkatunturi Herdsmen's Committee.

9.3 On the issue of "effective participation", the authors contend that meetings such as the one of 19 February 1996 referred to by the State party (see paragraph 8.3 above) do not serve

as a proper vehicle for effective participation. This was reconfirmed by the Sami Parliament on 14 June 1996, when it once again stated that the NFPS does not cooperate with the herdsman's committees in a satisfactory manner. The authors deny that they have in any way distorted the contents of the State party's earlier submissions, the conclusions of the Rovaniemi Court of Appeal, or of the Committee's Views in the first Länsman case.

### Examination of the merits

10.1 The Human Rights Committee has considered the present communication in the light of all the information provided by the parties, as required to do under article 5, paragraph 1, of the Optional Protocol. The issue to be determined is whether logging of forests in an area covering approximately 3,000 hectares of the area of the Muotkatunturi Herdsman's Committee (of which the authors are members) - i.e. such logging as has already been carried out and future logging - violates the authors' rights under article 27 of the Covenant.

10.2 It is undisputed that the authors are members of a minority within the meaning of article 27 of the Covenant and as such have the right to enjoy their own culture. It is also undisputed that reindeer husbandry is an essential element of their culture; that some of the authors practice other economic activities in order to gain supplementary income does not change this conclusion. The Committee recalls that economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community<sup>5</sup>

10.3 Article 27 requires that a member of a minority shall not be denied the right to enjoy his culture. Measures whose impact amounts to a denial of the right are incompatible with the obligations under article 27. As noted by the Committee previously in its Views on case No. 511/1992, however, measures that have a certain limited impact on the way of life and the livelihood of persons belonging to a minority will not necessarily amount to a denial of the rights under article 27.

10.4 The crucial question to be determined in the present case is whether the logging that has already taken place within the area specified in the communication, as well as such logging as has been approved for the future and which will be spread over a number of years, is of such proportions as to deny the authors the right to enjoy their culture in that area. The Committee recalls the terms of paragraph 7 of its General Comment on article 27, according to which minorities or indigenous groups have a right to the protection of traditional activities such as hunting, fishing or reindeer husbandry, and that measures must be taken "to ensure the effective participation of members of minority communities in decisions which affect them".

10.5 After careful consideration of the material placed before it by the parties, and duly noting that the parties do not agree on the long-term impact of the logging activities already carried out and planned, the Committee is unable to conclude that the activities carried out as well as approved constitute a denial of the authors' right to enjoy their own culture. It is uncontested that the Muotkatunturi Herdsman's Committee, to which the authors belong, was consulted in the process of drawing up the logging plans and in the consultation, the

Muotkatunturi Herdsmen's Committee did not react negatively to the plans for logging. That this consultation process was unsatisfactory to the authors and was capable of greater interaction does not alter the Committee's assessment. It transpires that the State party's authorities did go through the process of weighing the authors' interests and the general economic interests in the area specified in the complaint when deciding on the most appropriate measures of forestry management, i.e. logging methods, choice of logging areas and construction of roads in these areas. The domestic courts considered specifically whether the proposed activities constituted a denial of article 27 rights. The Committee is not in a position to conclude, on the evidence before it, that the impact of logging plans would be such as to amount to a denial of the authors' rights under article 27 or that the finding of the Court of Appeal affirmed by the Supreme Court, misinterpreted and/or misapplied article 27 of the Covenant in the light of the facts before it.

10.6 As far as future logging activities are concerned, the Committee observes that on the basis of the information available to it, the State party's forestry authorities have approved logging on a scale which, while resulting in additional work and extra expenses for the authors and other reindeer herdsman, does not appear to threaten the survival of reindeer husbandry. That such husbandry is an activity of low economic profitability is not, on the basis of the information available, a result of the encouragement of other economic activities by the State party in the area in question, but of other, external, economic factors.

10.7 The Committee considers that if logging plans were to be approved on a scale larger than that already agreed to for future years in the area in question or if it could be shown that the effects of logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of the authors' right to enjoy their own culture within the meaning of article 27. The Committee is aware, on the basis of earlier communications, that other large scale exploitations touching upon the natural environment, such as quarrying, are being planned and implemented in the area where the Sami people live. Even though in the present communication the Committee has reached the conclusion that the facts of the case do not reveal a violation of the rights of the authors, the Committee deems it important to point out that the State party must bear in mind when taking steps affecting the rights under article 27, that though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee do not reveal a breach of article 27 of the Covenant.

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

#### Footnotes

\* Made public by decision of the Human Rights Committee.

1/ General Comment 23[50], adopted in April 1994.

2/ General Comment No. 23[50], paragraph 7.

3/ Views on case No. 511/1992 (I. Länsman et al. v. Finland), adopted 26 October 1994.

4/ See Note 3, paragraph 9.8.

5/ Cf. Views on case No. 197/1985 (Kitok v. Sweden), Views adopted 27 July 1988, para. 9.2; on case No. 511/1992 (I. Länsman et al. v. Finland), adopted 26 October 1994, paragraph 9.1.