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on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March to 1 April 2005

VIEWS

Communication No. 1023/2001

Submitted by: Jouni Länsman, Eino Länsman and the
Muotkatunturi Herdsmen's Committee
(represented by counsel, Ms. Johanna Ojala)

Alleged victim: The authors

State party: Finland

Date of communication: 6 November 2000 (initial submission)

Document references: - Special Rapporteur's rule 92/97 (old rule
86/91) decision, transmitted to the State party on
31 October 2001. (not issued in document form)

- CCPR/C/77/D/1023/2001, decision on
admissibility adopted on 1 April 2003

Date of adoption of Views: 17 March 2005

* Made public by decision of the Human Rights Committee

Subject matter: Rights of reindeer herders with respect to logging operations undertaken by the State party

Procedural issues: Request for review of admissibility decision

Substantive issues: Extent to which logging may be carried out by State authorities before it will be considered to violate the rights of reindeer herders

Articles of the Covenant: 27

Articles of the Optional Protocol: 2, and 5, paragraph 2 (b)

On 17 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1023/2001. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-third session

concerning

Communication No. 1023/2001*

Submitted by: Jouni Länsman, Eino Länsman and the
Muotkatunturi Herdsmen's Committee
(represented by counsel, Ms. Johanna Ojala)

Alleged victim: The authors

State party: Finland

Date of initial communication: 6 November 2000 (initial submission)

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

Meeting on 17 March 2005,

Having concluded its consideration of communication No. 1023/2001, submitted to
the Human Rights Committee on behalf of Jouni Länsman, Eino Länsman and the
Muotkatunturi Herdsmen's Committee, 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 author of
the communication, and the State party,

Adopts the following:

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

1.1 The authors of the communication are Jouni E. Länsman, Eino A. Länsman, both Finish
citizens, and the Muotkatunturi Herdsmen's Committee (of which the two individual authors
are part). The authors allege to be victims of a violation by Finland of article 27 of the
Covenant. They are represented by counsel. The Optional Protocol entered into force for the
State party on 23 March 1976.

* The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati,
Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin,
Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth
Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-
Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

1.2 On 31 October 2002, under Rule 86 of its Rules of Procedure, the Committee, acting through its Chairperson, requested the State party “to refrain from conducting logging activities that would affect the exercise by Mr. Jouni Länsman et al. of reindeer husbandry in the Angeli area, while their case is under consideration by the Committee”.

Factual Background

2.1 On 30 October 1996, the Committee delivered its Views in *Länsman et al. v. Finland* (“the earlier communication”).¹ The Committee found, on the evidence then before it, no violation of the rights under article 27 of the current two individual authors (and others) in the completed logging of some 250 hectares in Pyhäjärvi and the proposed logging of some further 250 hectares in Kirkko-outa (both are in the Angeli area).

2.2 The Committee went on to find:

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.

2.3 By 1999, all 500 hectares of the two areas at issue in the earlier communication had been logged. Moreover, in 1998, a further 110 hectares were logged in the Paadarskaidi area of the Herdsmen’s Committee (not part of the areas covered by the earlier communication).

2.4 By the date of submission of the communication, yet another logging operation in Paadarskaidi had been proposed, with minimal advance warning to the Herdsmen’s Committee and with an imminent commencement date. At that point, the Herdsmen’s Committee had yet to receive a written plan of the nature and scope of the logging operation. The National Forest & Park Service had indicated that it would send the plans to the

¹ *Case no. 671/1995.*

Herdsmen's Committee at a later date, having indicated in its previous plan that the next logging operation would be due to take place only after a year and in a different location.

The complaint

3.1 The authors allege a violation of their rights as reindeer herders under article 27 of the Covenant, both inasmuch as it relates to logging already undertaken and to logging proposed. At the outset, they complain that since the 1980s, some 1,600 hectares of the Herdsmen's Committee's grazing area in Paadarskaidi have been logged, accounting for some 40 per cent of lichen (utilized for feeding reindeer) in that specific area.

3.2 As to the effect of the logging on the author's herd, it is submitted that reindeer tend to avoid areas being logged or prepared for logging. They therefore stray to seek other pastures and thereby incur additional labour for the herders. After logging, logging waste prevents reindeer grazing and compacted snow hampers digging. The logging operations result in a complete loss of lichen in the areas affected, allegedly lasting for hundreds of years.

3.3 The authors recall that after heavy snows in 1997, herders had for the first time to supply capital and labour intensive fodder for the reindeer rather than rely on lichen. The ongoing and increasing logging of fine lichen forests increases the necessity of providing fodder and threatens the economic self-sustainability of reindeer husbandry, as husbandry depends on the reindeer being able to sustain themselves.

3.4 The authors recall that the maximum number of reindeer that may be kept by the Herdsmen's Committee is decided by the Ministry of Agriculture and Forestry. The Ministry is charged by statute, in determining the maximum number of reindeer, to ensure that the number of reindeer grazing in the Herdsmen's Committee's area in the winter season does not exceed the sustainable productive capacity of the Herdsmen's Committee's winter pastures. Since the Committee's Views in the earlier communication, the Ministry has twice reduced the Herdsmen's Committee's number of animals: from 8,000 to 7,500 in 1998, and from 7,500 to 6,800 in 2000. In two administrative decisions within two years, then, the Ministry considered that the sustenance of winter pasture in Muotkatunturi was so low that the sustainable number of reindeer should be reduced by 15%. The authors allege that the principal cause of this decline in winter pastures, and particularly of horsehair lichen pastures, are the logging operations.

3.5 Despite the recent reductions in reindeer herds, the National Forest & Park Service continues to conduct logging operations, destroying the Herdsmen's Committee's pastures, and further deteriorating husbandry conditions. The authors contend that this situation violates article 27, in that forestry operations are continuing and the effects are more serious than first thought. At the same time that logging proceeds, reindeer numbers have been reduced because the pastures still available cannot support the previous number of reindeer.

3.6 The authors state that, in respect of logging at Kirkko-outa and Pyhäjärvi, all domestic remedies have been exhausted. As to the other areas, the authors invoke the Committee's Views in the earlier communication for the proposition that the domestic courts do not need to be seized afresh of the matter. These elements are said to be satisfied, since the State party itself recognizes that the effects have been more serious, while it continues both to log and to plan further logging.

The State party's admissibility submissions

4.1 On 31 December 2001, the State party supplied its observations on the admissibility only of the communication. On 8 February 2002, the Committee, acting through its Chairperson, decided to separate the consideration of the admissibility and the merits of the case.

4.2 The State party informed the Committee that it "refrains from conducting logging activities in the Angeli area (paragraph 10.1² in the Committee's Views in case no. 671/1995, 30 October 1996) that would affect the exercise by the individual authors' reindeer husbandry while their communication is under consideration by the Committee".

4.3 The State party notes that as far as the Paadarskaidi area is concerned, the National Forest & Park Service carried out increment felling (preparative cutting) totalling some 200-300 hectares between 1998 and 2000. The distance between the Angeli area and the Paadarskaidi area is about 30 kilometres. It considers the communication inadmissible on three grounds: lack of proper standing as to one complainant, lack of exhaustion of domestic remedies, and for failure to substantiate the claims for purposes of admissibility.

4.4 While accepting the status of the individual authors, the State party rejects the ability of the Herdsmen's Committee to submit a communication. It considers that the Herdsmen's Committee does not fall within the entitlement of article 27 of the Covenant, nor is it an "individual" within the meaning of article 2 of the Optional Protocol. Under the Reindeer Herding Act, a Herdsmen's Committee consists of all herdsmen in a given area and who are not personally responsible for the performance of the Committee's duties; thus, any claim on the Herdsmen's Committee's behalf amounts to an *actio popularis*.

4.5 The State party observes that domestic remedies remain available, as shown by the decisions of the District Court, Court of Appeal and Supreme Court in the earlier communication, the effectiveness of which has not been contested. The authors did not initiate any proceedings regarding logging operations planned or carried out in either the Angeli or Paadarskaidi areas subsequent to the Committee's Views in the earlier communication.

4.6 The State party notes that in its Views on case 671/1995, the Committee merely observed that, if the logging effects were more serious or further plans were approved, it would have to be considered whether this would constitute a violation of the authors' article 27 rights. The Committee did not imply the requirement to exhaust domestic remedies could be done away with in any further complaint. This is particularly applicable when an assessment of a possible violation of article 27 requires an assessment of the relevant evidence both by the domestic courts and in turn the Committee. There is no proof that the effects of the earlier logging operations were more serious than foreseen at the time. The Ministry's decisions to reduce the Herdsmen's Committee's herd does not substantiate any claim of the effects of individual logging operations. Nor may the reductions in reindeer be

² Para 10.1 provides, as relevant: "The issue to be determined is whether logging of forests in an area covering approximately 3,000 hectares of the area of the Muotkatunturi Herdsmen'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."

considered a justification for not pursuing domestic remedies, where such allegations would be examined.

4.7 Accordingly, the authors have neither exhausted domestic remedies available to them, nor demonstrated any special circumstances which might absolve them from doing so. Finally, the State party argues that the brief communication lacks sufficient material basis, including basic evidence, that would go beyond a mere allegation. Accordingly, the case is said not to have been substantiated.

Authors' comments

5.1 In comments dated 15 March 2002, the authors supplied comments, restricted to the admissibility arguments of the State party.

5.2 As to the availability of domestic remedies in respect of the other areas (not covered by the earlier communication), the authors contend that the State party's suggestion of available remedies is misplaced. No court action designed to prevent specific logging plans was successful, partly because any concrete logging tract "is always only a seemingly modest part of the overall lands [that] are used by the Sami for reindeer herding". There is no indication that a case seeking positive protection for Sami herders would be successful, and, in any event, the existing Supreme Court ruling would be a further obstacle.

5.3 For the authors, the National Forest & Park Service has been too restrictive in providing information on its logging activities affecting the life of Angeli Sami. On the issue of substantiation of claims, the authors argue that they have shown that the reductions of reindeer after the Ministry's decisions was a direct consequence of the impact of logging on pasture areas. They have detailed the State party's plans to continue logging despite the Committee's earlier Views. The authors regard this as sufficient substantiation.

5.4 Finally, the authors state that there are plans for further logging by the National Forestry and Park Service within the area already subject to court proceedings, an area known as the Kippalrova tract.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 During its 77th session, the Committee considered the admissibility of the communication. On the contention that the Muotkatunturi Herdsmen's Committee did not have standing to bring a claim under the Optional Protocol, the Committee referred to its constant jurisprudence that legal persons are not "individuals" able to bring such a claim.³ Neither was there an indication that individual members of the Muotkatunturi Herdsmen's Committee had authorized it to bring a claim on their behalf, or that Jouni and/or Eino Länsman were authorized to act on behalf of the Herdsmen's Committee and its members. Accordingly, while it was uncontested that Jouni and Eino Länsman had standing to bring the communication on their own behalf, the Committee considered the communication

³ See, for example, *Hartikainen v. Finland*, Case no. 40/1978, Decision adopted on 9 April 1981, *JT v. Canada*, Case no. 104/1981, Decision adopted on 6 April 1983, and *Ominayak et al. v. Canada*, *op. cit.*

inadmissible under article 1 of the Optional Protocol insofar as it related to the Muotkatunturi Herdsmen's Committee and/or its constituent members, other than Jouni and Eino Länsman.

6.2 On the issue of exhaustion of domestic remedies, the Committee noted that with the Supreme Court's decision of 22 June 1995 there were no further avenues available to challenge the decision to undertake logging in the Pyhäjärvi and Kirkko-outa areas (the areas at issue in the earlier communication). Accordingly, the Committee considered that the issue of whether logging of these areas has had effects, in terms of article 27, greater than anticipated by either the Finnish courts in those proceedings or by the Committee in its Views on case No. 671/1995 is one that is admissible.

6.3 Regarding the Kippalrova area in which logging was planned, the Committee noted that this forest tract fell within the area covered by the Supreme Court decision of 22 June 1995. Accordingly it did not appear that further judicial review of this decision was possible. Accordingly, the Committee held the issues arising from the proposal to log this area to be admissible.

6.4 As to the 1998 logging in Paadarskaidi (outside the area covered by the Supreme Court decision), the Committee noted that the domestic remedies to which the State party points are all instances that have dealt, in terms of article 27, with logging plans prior to those plans being executed. In such circumstances, the decision on the anticipated future effects of logging is by necessity speculative, with only subsequent events bearing out whether or not the initial assessment was correct. The Committee observed that other cases referred to by counsel have also been challenges to proposed logging in advance. The Committee considered that the State party had not demonstrated, on the information supplied, what domestic remedies might be available to the authors seeking compensation or to obtain another appropriate remedy for an alleged violation of article 27 by virtue of logging that has already taken place. Accordingly, the Committee considered that the question of the effects, in terms of article 27, of logging in the Paadarskaidi already carried out was admissible.

6.5 On proposed further logging in Paadarskaidi, the Committee noted the authors' contention that no claim before the Finnish courts seeking to prevent logging taking place had been successful. While mindful of the need to examine whether the judicial remedies in question were available and effective in practical terms, the Committee had insufficient information before it in terms of the numbers of actions brought, the arguments invoked and their outcomes to conclude that the judicial remedies invoked by the State party were ineffective. Accordingly, this portion of the communication was considered inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

6.6 Taking into account the authors' contention that they had suffered a significant reduction in the number of reindeer that they are permitted to raise in their herding areas, the Committee considered that the parts of the communication that have not been found inadmissible for lack of standing or failure to exhaust domestic remedies had been substantiated, for purposes of admissibility.

6.7 On 1 April 2003, the Committee declared the communication admissible insofar as it relates to the cumulative effects on the exercise by Jouni and Eino Länsman of their rights under article 27 of the Covenant arising from the logging that had taken place in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas, along with the proposed logging in Kippalrova.

The State party's merits submission

7.1 On 1 October 2003, the State party submitted comments on the merits and requested the Committee to review its previous decision on admissibility for failure to exhaust domestic remedies. It recalls that complex questions such as the issue of the alleged effects of logging proceedings in the present case must and can be thoroughly investigated, for example through expert and witness testimonies, on-site inspections and specific information on local circumstances. It is unlikely that all the necessary information could be obtained outside national court proceedings. The present case does not show any special circumstances which might have absolved the authors from the requirement of exhausting the domestic remedies at their disposal. The authors could take a civil action for damages against the State in a District Court at first instance, if necessary, on appeal in the Court of Appeal, and subject to leave to appeal in the Supreme Court.

7.2 On the merits, the State party acknowledges that the Sami community is an ethnic community within the meaning of article 27, and that the authors, as members of that community, are entitled to protection under this provision. It reviews the Committee's jurisprudence on article 27 of the Covenant,⁴ and concedes that the concept of "culture" within the meaning of article 27 covers reindeer husbandry, as an essential component of the Sami culture.

7.3 The State party 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. The State party refers to General Comment on article 27, adopted in April 1994, 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 invokes the *ratio decidendi* of the Committee's Views in *I. Länsman et al. v. Finland*⁵, where the Committee held that States parties may 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 do not necessarily violate article 27.

7.4 The State party notes that the areas referred to in the communication is owned by the State and under the administration of the National Forestry and Park Service which is entitled, *inter alia*, to log forests and construct roads at its discretion - with due regard to the relevant provisions of national legislation and international treaties. In the State party's view, due care was exercised for all logging operations carried out in State-owned forests in northern Finland. In the past few years, logging operations have mainly been carried out for the purposes of thinning forests to ensure proper growth.

7.5 The State party points out that the size of the territory administered by the Muotkatunturi Herdsmen's Committee is relevant. The surface of the land area administered

⁴ 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*).

⁵ *Supra*

by the Herdsmen's Committee is approximately 248,000 hectares, of which some 16,100 hectares of forests (about 6 per cent of the land areas administered by the Committee) are used for the purposes of forestry on State-owned lands. In fact, there have been very few logging operations in the area, the surface of the lands subject to logging amounting to approximately 1.2 per cent of the area administered by the Committee. The operations carried out in this territory between 1983 and 2001 amounted to 152 hectares per year, whereas the planned logging operations to take place between 2003 and 2012 would amount to 115 hectares per year. In view of the total surface of forest areas, both the logging operations carried out and the planned ones are less extensive than those carried out in private forests in the area. While reindeer owners have required the National Forest and Park Service to terminate forestry activities in the land areas administered by the Committee, they did not reduce their own logging operations.

7.6 The State party denies that any new logging operations have been planned for the Angeli area (Pyhäjärvi and Kirkko-outa), nor have any such operations been carried out in or planned for the area of Kippalrova. The State party observes that as far as the admissible part of the complaint with regard to the Paadarskaidi area is concerned, the National Forest and Park Service mainly carried out increment felling (preparative cutting), in the area, amounting to approximately 110 hectares in 1998.

7.7 The logging operations in Pyhäjärvi in 1996 (170 hectares) and in 1999 (regeneration fellings over 60 hectares), as well as operations in Kirkko-outa in 1998 (regeneration fellings amounting to 70 hectares and thinning amounting to 200 hectares) were already taken into account by the Human Rights Committee on 22 November 1996. The Committee had considered the logging operations which had been carried out by the date of the decision, as well as planned future operations in the Angeli area. According to the decision, there was no violation of article 27 of the Covenant. It observes that the regeneration fellings (300 hectares) in the Angeli area constitute 0.8 percent and the thinning logging operations (200 hectares) constitute 0.5 percent of the forest, administered by the Muotkatunturi Herdsmen's Committee.

7.8 As to the effects of logging on reindeer herding, the State party notes that it has not been shown that the effects of the earlier logging operations were more than anticipated. Nor was it shown that logging operations would create long-lasting harm preventing the authors from continuing reindeer herding in the area at its present extent. It observes that the effects of forestry should not be examined in the short term or in respect of individual logging sites, but from a wider perspective. According to a statement given by the Finnish Game and Fisheries Research Institute on 31 January 2002, the operations referred to in the communication do not have any significant additional adverse effects on reindeer herding in the long term if the numbers of reindeer are maintained approximately at their present level. In view of the state of winter herding areas, the present number of reindeer is high.

7.9 The State party notes that because of the severe conditions of nature in the area administered by the Herdsmen's Committee, provisions for the purposes of preserving nature and the environment are included, among others, in section 21 of the Reindeer Herding Act, which provides that the Ministry of Agriculture and Forestry shall determine the maximum number of reindeer that the Herdsmen's Committee may keep in their herds, as well as the number of reindeer that may be owned by individual Committee members. In the determination of the maximum numbers of reindeer, the principle enshrined in section 21,

subsection 2, is applied according to which the number of reindeer in the herds on the lands administered by the Committee may not exceed the sustainable productive capacity of the winter pastures.

7.10 Even after the reductions of the maximum number of reindeer by the Ministry of Agriculture and Forestry in 1998/1999 and 2000/2001, the maximum number of reindeer allowed is more than three times the numbers allowed in the 1970s. In 1973, the number was no more than 1,051, whereas the highest number in 1990 was 10,398. The State party argues that the significant increase in the number of reindeer kept in herds in the 1980s and 1990s had adverse effects on the state of winter herding pastures. The high numbers of reindeer kept by the Herdsmen's Committee in their herds and the resulting adverse effects on herding lands, increase the need for additional feeding, thereby harming the reindeer husbandry. The State party adds that apart from the number of reindeers per herd, the difficulties of reindeer herdsmen and the poor state of herding lands are not so much affected by forestry as they are by other forms of forest use. For the State party, the Ministry's decision on the permitted number of reindeer does not alone constitute any substantiated evidence of the effects of certain individual loggings, but rather of the effects of the high numbers of reindeer kept in herds.

7.11 The State party submits that there has been regular contact between the authorities and the Herdsmen's Committee in the form of letters, negotiations and even various on-site visits. It notes that irrespective of whether the owner is the State or an individual citizen, the possible restrictions resulting from the right of the Sami, other Finns or nationals of other European Economic Area countries, to carry out reindeer herding cannot entirely deprive landowners of their own rights. It is also observed that reindeer herdsmen's committees within the Sami often have a mixed composition of both Sami and other Finns as their members. The relevant provisions of the Finnish Constitution are based on the principle that both population groups have, as performers of professional activities, equal status before the law and neither group may be placed in a more favourable position than the other, not even in respect of reindeer herding.

Authors' comments

8.1 On 5 December 2003, the authors commented on the State party's submission. They dispute the claim that they may institute civil proceedings for damages against the State party. According to section 1 of chapter 5 of the Finnish Damages and Tort Liability Act of 1974, "damages shall constitute compensation for the personal injury and damage to property. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also constitute compensation for economic loss that is not connected to personal injury or damage to property." The National Forest and Park Service, which caused the damage, does not exercise public authority and the logging operations are not a criminal offence. Thus, compensation for financial damage could arise under the Act only if there are "especially weighty reasons". The application of the concept of "especially weighty reasons" in Finnish case law has caused problems of interpretation, and "it is by no means clear that the provision could be applied to the damage to the authors". In any event, such a process of litigation would be laborious, onerous and the costs prohibitive. The litigation would take several years to complete.

8.2 The authors contest the State party's denial that it intends to carry out logging in Kippalrova and provides a map which it purports to prove otherwise. In October 2003 the National Forest and Park Service announced that it was preparing a further logging plan in Paadarskaidi.

8.3 As to the logging operations undertaken in the entire territory, the authors submit that the territory covered by the Herdsmen's Committee is not homogeneous forest but is made up of different types of grazing land. Even though the National Forest and Park Service engages in forestry in only part of the area administered by the Committee, 35 per cent of the forest pastures in the winter grazing area and 48 percent of those in the summer grazing area are subject to forestry operations by the State and private owners. According to the current land demarcation for forestry and statements made by the National Forest and Park Service, the area in question will sooner or later be absorbed into the felling cycle. The felling cycle involves a wide range of measures, even the least invasive of which cause harm to reindeer husbandry. 9 per cent of the entire territory of the Committee is privately owned, and the owners are not subject to the same obligations as the State with respect to reindeer husbandry.

8.4 The National Forest and Park Service invited the Herdsmen's Committee on two field trips in Kippalvaara and Kippalrova in September 2001 and Savonvaara-Pontikkamäki in January 2002, at which herdsmen expressed their opposition to the logging proposals. Nevertheless, the operations started in the Savonvaara-Pontikkamäki region (not part of the current communication) in the early spring of 2002. In October 2003, the National Forest and Park Service announced that logging will take place there in the near future.

8.5 On the issue of participation of the Herdsmen's Committee, while the National Forest and Park Service arranged a hearing which the Committee members and other interested groups could attend, this hearing was, in practice, merely an exercise in opinion gathering. In the authors' view, the National Forest and Park Service determines the principles, strategies and objectives of its forestry operations exclusively according to its own needs; as its decisions are not open to appeal, this fails to ensure effective participation.

8.6 As to the effects of logging, the authors refer to several investigations, studies and Committee reports which have been prepared since the previous *Länsman* case, and which purportedly attest to the substantial damage caused by the logging operations. An inventory of Alectoria lichen was conducted in the territory of the Lapland Herdsman's Committee in 1999 to 2000, in which it confirmed that the incidence of Alectoria lichen in the logged forest areas is very low, and that logging operations cause considerable harm to reindeer husbandry. Similar results were found in other reports, including various Swedish studies published in 1998 and 2000. In addition, the Finnish Ministry of Agriculture and Forestry, in considering the maximum permissible population of reindeer per herd, acknowledged the importance and availability of winter nutrition for reindeer – Lichenes, Alectoria and Deschampsia – and that logging has reduced stocks of the former two foods.

8.7 It is submitted that after logging, as reindeer do not remain grazing on managed areas, grazing pressure comes to bear on the remaining territory. This means that the effects of logging also extend beyond the areas that are actually managed. The authors argue that the impact of logging operations are long-term, practically permanent, and that the measures employed create new damage, exacerbate existing damage, and extent the area affected by logging. Since the logging operations, the access of reindeer to winter food has become more

susceptible to other variations in the Pyhäjärvi, and Kirkko-outa areas, including those arising from natural phenomena, such as heavy snow cover, delays in the arrival of spring and an increase in predators, especially wolves.

8.8 On the State party's argument that according to the Finnish Game and Fisheries Research Institute, "the loggings referred to in the communication do not have significant additional adverse effects on reindeer herding in the long term if the numbers of reindeer are maintained approximately at their same level", the authors submit that the State party omitted the last line of the opinion "...and the deterioration in pastures is compensated by feeding. If, on the other hand, the aim is to engage in reindeer husbandry based purely on natural pastures, then loggings – even those notified as relatively mild – will be of greater significance for reindeer husbandry that is already in difficulties for other reasons". The authors refer to the view of the Lapland and Kemin-Sompio Herdsmen Committee's who have previously stated that artificial feeding causes inequalities and disputes within the Herdsmen's Committee, and is regarded as a threat to the old Sami tradition and culture of reindeer husbandry. In recent years, because of the lack of natural winter food, the authors have had to rely on artificial reindeer food which requires additional income from sources other than reindeer husbandry, thereby impacting on the profitability of this form of livelihood.

8.9 The authors acknowledge that over the last two years, conditions have been favourable from the point of view of securing natural food supplies, resulting in a substantial reduction in expenses for additional feeding and the survival rate of reindeer beyond expectation. Despite these conditions, the profitability of reindeer husbandry has not improved, as the companies buying reindeer meat have reduced their prices by up to 30 per cent and have purchased less. In addition, the State collects a penalty fee if the Herdsmen's Committee exceeds its quota of reindeer per herd on account of failure to sell.

Review of admissibility

9.1 The Human Rights Committee has examined the communication in light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 As to the State party's request to review admissibility on the grounds that the authors did not take a civil action for damages and thus did not exhaust domestic remedies, the Committee considers that in the present case where the issue is the effect of past logging, the State party has not demonstrated that an action for damages would be an effective remedy to address all relevant aspects of the State party's responsibility under article 27 of the Covenant to protect the right of minorities to enjoy their own culture and with respect to a claim that this culture has been or is being destroyed. For this reason, the Committee does not intend to reconsider its admissibility decision.

9.3 As to the claim, that the negative effects of the *proposed* logging in Kippalrova would interfere with their rights under article 27, the Committee recognises the commitment of the State party, expressed in its submission on the merits, not to proceed to logging in this area and therefore finds it unnecessary to consider the possibility of future logging, by the State, in this area any further.

9.4 The Committee proceeds to a consideration of the merits of the claims relating to the effects of past logging in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas.

Consideration of the merits

10.1 As to the claims relating to the *effects* of logging in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas of the territory administered by the Muotkatunturi Herdsmen's Committee, the Committee notes that 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 and that economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community.⁶ 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 in its Views on case no. 511/1992 of *Länsman et al. v. Finland*, however, measures with only a limited impact on the way of life and livelihood of persons belonging to a minority will not necessarily amount to a denial of the rights under article 27.

10.2 The Committee recalls that in the earlier case no. 511/1992, which related to the Pyhäjärvi and Kirkko-outa areas, it did not find a violation of article 27, but stated that if logging to be carried out was approved on a larger scale than that already envisaged 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 article 27. In weighing the effects of logging, or indeed any other measures taken by a State party which has an impact on a minority's culture, the Committee notes that the infringement of a minority's right to enjoy their own culture, as provided for in article 27, may result from the combined effects of a series of actions or measures taken by a State party over a period of time and in more than one area of the State occupied by that minority. Thus, the Committee must consider the overall effects of such measures on the ability of the minority concerned to continue to enjoy their culture. In the present case, and taking into account the specific elements brought to its attention, it must consider the effects of these measures not at one particular point in time – either immediately before or after the measures are carried out - but the effects of past, present and planned future logging on the authors' ability to enjoy their culture in community with other members of their group.

10.3 The authors and the State party disagree on the effects of the logging in the areas in question. Both express divergent views on all developments that have taken place since the logging in these areas, including the reasons behind the Minister's decision to reduce the number of reindeer kept per herd: while the authors attribute the reduction to the logging, the State party invoke the overall increase in reindeer threatening the sustainability of reindeer husbandry generally. While the Committee notes the reference made by the authors to a report by the Finish Game and Fisheries Research Institute that "loggings – even those notified as relatively mild – will be of greater significance for reindeer husbandry" if such husbandry is based on natural pastures only (supra 8.8), it also takes note of the fact that not only this report but also numerous other references in the material in front of it mention other factors explaining why reindeer husbandry remains of low economic profitability. It also

⁶ Views on case no. 197/1985 (*Kitok v. Sweden*), Views adopted 27 July 1988, para. 9.2; on case No. 511/1992 (*Länsman et al. v. Finland*), adopted 26 October 1994, paragraph 9.2.

takes into consideration that despite difficulties the overall number of reindeers still remains relatively high. For these reasons, the Committee concludes that the effects of logging carried out in the Pyhäjärvi, Kirkko-outa and Paadarskaidi areas have not been shown to be serious enough as to amount to a denial of the authors' right to enjoy their own culture in community with other members of their group under article 27 of the Covenant.

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 before 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.]
