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Communication No. 2102/2011

Views adopted by the Committee at its 110th session (10-28 March 2014)

<i>Submitted by:</i>	Kalevi Paadar; Eero Paaadar and his family; Veijo Paadar; and Kari Alatorvinen and his family (represented by counsel Johanna Ojala)
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Finland
<i>Date of communication:</i>	22 September 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 September 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	26 March 2014
<i>Subject matter:</i>	Forced slaughter of the authors' reindeer.
<i>Substantive issues:</i>	Unfair trial, right to equality and non-discrimination, right of indigenous peoples to enjoy their own culture.
<i>Procedural issue:</i>	None
<i>Articles of the Covenant:</i>	14, paragraph 1; 26; 27.
<i>Article of the Optional Protocol:</i>	None. [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 (110th session)

concerning

Communication No. 2102/2011*

Submitted by: Kalevi Paadar; Eero Paaadar and his family; Veijo Paadar; and Kari Alatorvinen and his family (represented by counsel Johanna Ojala)

Alleged victim: The authors

State party: Finland

Date of communication: 22 September 2011 (initial submission)

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

Meeting on 26 March 2014,

Having concluded its consideration of communication No. 2112/2011, submitted to the Human Rights 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 pursuant to article 5, paragraph 4 of the Optional Protocol

1.1 The authors of the communication are Mr. Kalevi Paadar; Mr. Eero Paaadar and his family (his wife Taimi Jetremoff, and his three minor children, Hannu, Marko and Petri Paadar); Mr. Veijo Paadar; and Mr. Kari Alatorvinen and his family (his wife Paula Alatorvinen, and his four children, Johanna, born on 13 December 1986; Jennika, born on 22 June 1988; Joonas, born on 21 March 1991; and Juuli Alatorvinen, born on 13 March 2001). All of them, except Mr. Kari Alatorvinen, are members of the indigenous Sami people. Mr. Alatorvinen's wife and children are also Sami. The authors allege a violation by Finland of articles 14; 26; and 27 read alone and in conjunction with article 1 of the

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

The text of a joint individual opinion by Committee members Mr. Walter Kaelin, Mr. Victor Manuel Rodríguez-Rescia, Ms. Anja Seibert-Fohr and Mr. Yuval Shany is appended to the present Views.

International Covenant on Civil and Political Rights (hereinafter “the Covenant”). The authors are represented. The Optional Protocol entered into force for Finland on 23 March 1976.

1.2 On 23 September 2011, the Committee acting through its Special Rapporteur on New Communications and Interim Measures requested the State party to refrain from any further forced slaughtering of the authors’ reindeer while their case was under consideration by the Committee. On 23 March 2012, the State party indicated that it had followed this request.

The facts as presented by the authors

2.1 The authors are full time reindeer herders. They live in the village of Nellim and belong to the Ivalo Reindeer Herding Cooperative (“the Cooperative”), which is divided into two herding groups, one in the North, around the village of Nellim, and one in the South around the village of Ivalo. The Nellim herding group and the Nellim village form a distinct Sami community within the broader area of the cooperative. The Nellim herding group is composed almost exclusively of Sami individuals and retains traditional methods of herding which are constitutive of the Sami culture. The four authors and their families are the only remaining families whose income is primarily based on reindeer herding. The remaining herders of the Nellim group own smaller numbers of reindeer and do not get their primary income from herding.

2.2 In the Nellim area reindeer herding is made difficult by the winter conditions and different pastures, in comparison to the Ivalo group. In addition to the pastures, predators and snow conditions, the reindeer husbandry of the two groups differ in that the authors’ reindeer herding is solely based on utilization of natural pastures. Whereas the Ivalo group feeds its reindeer significantly, the authors provide their reindeer with hay in the winter only to guide them and make them move to pastures of lichen and stay there. Reindeer feeding is not a part of Sami herding, which is based on free pasturage.

2.3 The Ivalo Cooperative is a public law entity. It is not a private association established freely by its members or a traditional and voluntary reindeer herding unit established by the indigenous Sami people who used to herd reindeer in natural communities, such as a family or village. The cooperative system was imposed through legislation in the thirties and is currently regulated by the Reindeer Husbandry Act (“the Act”), which was enacted in 1990.

2.4 The majority of the Cooperative’s herders belong to the Ivalo herding group. The Nellim group has fewer reindeer and is in the minority regarding decision-making. The Nellim group has unsuccessfully tried to separate itself from the Cooperative to form its own. According to the authors, disagreements within the Cooperative are the result of State interference in Sami reindeer herding through the creation of artificial large units to administer reindeer herding, instead of leaving it to the Sami themselves to determine the kind of natural communities best suitable for their herding. Traditional Sami reindeer husbandry is based on small herding groups formed by natural communities who have their own traditional pastures.

2.5 Under Section 21 of the Act, the Ministry of Agriculture and Forestry determines, for a period of ten years at a time, the number of living reindeer a cooperative may keep in its territory and the maximum number of such reindeer a shareholder of a cooperative may own. When determining the maximum number of living reindeer of a cooperative, the Ministry must take into account that the number of reindeer grazing in the territory of the cooperative during the winter season does not exceed the sustainable production capacity of the winter pasture of the cooperative.

2.6 Under Section 22 (1) of the Act, if the number of living reindeer of a cooperative or a reindeer owner exceeds the maximum number referred to in Section 21, the cooperative must, in the course of the following herding year, decide on the reduction of the number of reindeer to the maximum allowable number. Under Section 22 (2), on special grounds, a cooperative may decide that the number of reindeer belonging to a shareholder shall not be reduced, in which case equivalent reductions will be carried out among other owners in proportion to the number of their reindeer. According to Section 22 (3), if it becomes clear that the number of reindeer during the following herding year would exceed the maximum allowable number, the cooperative may decide that the number of reindeer must be reduced during the current herding year. The decision of the cooperative can be enforced immediately, unless the Administrative Court decides otherwise as a result of a claim. According to Section 22 (4), if the owner does not reduce the number of his/her reindeer in accordance with the decision of the cooperative, the chairman of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner.

2.7 At the time of the facts, the highest allowable number of reindeer for the Ivalo Cooperative was 6000. The authors contend that this amount had not been exceeded during the four years before 2011. In fact, the number had been exceeded only once (2004-05) during the decade.

2.8 According to the authors, for several years the slaughtering plans of the Ivalo Cooperative have been formulated in such a way that, in practice, lead to the number of the authors' reindeer to decrease dramatically, and much more so than the number of the Ivalo group. The reason for that is the Cooperative's model to carry out the reduction of reindeer. This model does not take into account that, unlike for the Ivalo herding group, the nature-based herding methods of the Nellim group based on free grazing in natural pastures result in an in-built control mechanism for the size of the herd. Calf losses are an integral part of traditional Sami herding methods.

2.9 Every year, a large part of the newly born calves belonging to the Nellim group disappear in the forest due to different natural conditions and, in particular, their exposure to predators. At the time of the round-ups (from October to January), between 30 to 50 per cent of the calves born in spring go missing. In comparison, the calf loss of the Ivalo group is much smaller because their reindeer are kept closer to human settlements, which reduces their exposure to predators. Furthermore, the herding area of the Nellim group is located within a wider remote border area between Finland, Norway and Russia. According to recent scientific studies, there is a dense population of bears in this area, which is the main reason behind the heavy annual loss of calves. Current legislation¹ forbids killing and disturbing bears and eagles, either entirely or during spring and summer, which is when most of the calf losses occur. The only lawful means to combat heavy calf loss would be stopping traditional free grazing on natural pastures and introducing artificial extra feeding, which would not be economically feasible in Nellim and would mean a forced change in traditional herding practices.

2.10 The imbalance in predation pressure is not taken into account when the slaughtering plan is decided by the majority in the Cooperative. The plan lays down a slaughtering percentage (usually 70% or over) which is based on the number of adult reindeer the owners had at the end of the previous herding year in May. As a result, the slaughter is directed to the animals at the round-up place by using a number that is half a year old and does not consider the losses occurred during the previous months. Even if around 90% of the female adult reindeer have given birth to a calf, up to 50% of the calves don't exist

¹ The authors refer to the Nature Conservation Act and Game Husbandry Act, which hinder controlling the number of predators that prey on reindeer.

anymore at the time of the round-up. In calculating the number of reindeer to be slaughtered the new born calves are not taken into account, but are suitable to fulfil the slaughter obligation. The Nellim herders, unlike the Ivalo group in the Cooperative, do not have enough calves to fulfil their slaughter quota. As a result, they are forced to kill their adult female reindeer which they need as a productive base of their herding economy.²

2.11 In 2005, one of the authors, Kalevi Paadar, complained before the Rovaniemi Administrative Court regarding the Cooperative's decision to decrease the number of reindeer in a way which would threaten his occupation and lifestyle as a Sami reindeer herder. His complaint was dismissed on 13 December 2005, as the Court considered the Cooperative's decision to be legally valid. Kalevi Paadar appealed the dismissal before the Supreme Administrative Court which, on 10 April 2007, upheld the judgement of the Rovaniemi Court.

2.12 In its spring meeting on 31 May 2007, the Cooperative approved the slaughter plan for the herding year 2007-2008. The plan, imposed slaughter obligations on all shareholders, according to the same percentage, on the basis of the number of living reindeer in the previous herding year. The reindeer not slaughtered in the herding year 2006-2007 (so called backlog reindeer) should be slaughtered first.

2.13 At its autumn meeting on 7 October 2007, the Cooperative decided, with respect to the backlog reindeer, that the Cooperative would carry out the reduction on behalf of the owner. For the authors this meant that all their animals taken to the round-up would be slaughtered until the decisions of the Cooperative regarding reindeer reductions taken in the previous years would be implemented. In addition, the authors were requested to slaughter a share corresponding to the slaughter percentage of the current year. According to the authors, the total slaughter numbers demanded by the Cooperative exceeded the number of adult reindeer they had at the end of the previous herding year. Even counting the probable calf number (equivalent to 50-60 percent of the number of adult female reindeer), the slaughter demands exceeded the total number of reindeer the authors estimated to have at the time of the round-ups.³ Almost no animals would remain and the authors would no longer be able to pursue reindeer husbandry as, according to the law, herders cannot buy new reindeer and continue herding once they have lost all their reindeer.

2.14 The Nellim case is not unique in the Sami areas of Lapland. There are similar disputes regarding the number of reindeer to be slaughtered between cooperatives and Sami groups belonging to them. However, most of the Sami cooperatives in the State party apply slaughter systems that differ from the one used in Ivalo regarding the way in which calf loss is taken into consideration. In those systems different slaughter percentages apply to adult reindeer and calves and heavy calf loss is not punished with additional killing of adult reindeer, as is the case in the Ivalo model. The fundamental problem with the Ivalo model is that the reindeer reduction is not carried out in proportion to the actual number of living reindeer found in the round-ups, but in proportion to a number which is severely distorted at the time of slaughter. The other models enable the owner to retain his/her proportionate share of the cooperative's total number regardless of the high number of missing calves.

2.15 The authors filed a complaint against the decision of 7 October 2007 before the Administrative Court of Rovaniemi and requested interim measures of protection. They

² Reindeer herding in Finland is based mainly on calf slaughter, where only some of the young animals are left alive to compensate for the annual loss of adults.

³ According to the figures provided by the authors, the total number of adult reindeer own by the four families amounted to 418 for the herding year 2011; the predicted slaughter request for the herding year 2011-2012 was estimated to 932. This is so despite the fact that the number of adult reindeer the authors have has already decreased between 2003 and 2010.

claimed that setting the slaughter plan in equal manner to all shareholders of the cooperative prevented the Sami from practising their source of living and their culture and was therefore discriminatory for them. The Court ordered the interruption of the slaughter on 11 October 2007. By then, the cooperative had already slaughtered part of the authors' herd. On 19 October 2007, the Administrative Court dismissed the case without examining the merits. The judgement made no reference to the authors' Sami origin or to the Covenant. The authors filed an urgent request for interim measures with the Supreme Administrative Court on the same date, mentioning in their application that the slaughtering would continue on the next day which was a Saturday. As there was nobody that could look at the appeal during the weekend the slaughter continued on 20 October 2007. However, on 23 October 2007, the Supreme Administrative Court ordered it to stop.

2.16 On 4 April 2008, the Supreme Administrative Court reversed the judgement of the Rovaniemi Administrative Court and returned the case to it for retrial. In its judgment of 15 August 2008, the Rovaniemi Administrative Court rejected the authors' claims. It considered that the shareholders had to be treated equally regardless of their ethnic background. Therefore, the Cooperative's decision of 7 October 2007 could not be considered discriminatory against the Sami people in light of the Constitution and the international treaties binding upon Finland.

2.17 In September 2008, the authors appealed before the Supreme Administrative Court, arguing that the implementation of the Cooperative's decision of 7 October 2007 would mean the end of their reindeer husbandry, as the forced slaughter would include their so called capital reindeer, i.e. the female reindeer. It would also involve the disappearance of the Nellim herd as an independent unit as there would not be a sufficient number of herders and of reindeer left. The Sami livelihood in Nellim would therefore come to an end. These claims, uncontested by the Cooperative, were made with reference, inter alia, to article 27 of the Covenant.

2.18 The Court requested a statement from the Government concerning the implementation of Section 22 of the Act and matters related to the position of the Sami as indigenous people. Statements were received from the Ministry of Agriculture and Forestry, the Ministry for Foreign Affairs, the Ministry of Justice, the Finnish Game and Fisheries Research Institute and the Reindeer Herder's Association.

2.19 On 2 February 2011, the Supreme Administrative Court upheld the judgment of the Rovaniemi Administrative Court. The Court found that the effects of the Cooperative's decision "on the implementation manner of reindeer slaughter for specific years are not such that they would constitute an infringement of operational conditions for livelihood and culture, even if the potential differences in the approaches to reindeer herding are taken into account. Further, in the matter, on one hand general equality needs to be considered, i.e. equality among all reindeer owners and, on the other hand, realization of equality among the Sami reindeer owners, in particular, taking into account the premises for reindeer herding engaged in the traditional manner. In this respect it has not been shown, taking into account the perspectives presented by both sides, that the reindeer herding cooperative would have superseded requirements concerning equality in deciding, inter alia, on the slaughter method of the Appellants' so-called backlog reindeer. On the above-mentioned grounds, the decision of the Ivalo reindeer herding cooperative dated 7 October 2007 on the implementation method of the reduction of the number of reindeer is not contrary to (...) the Constitution of Finland or the basic rights and liberties and human rights".

2.20 The Court's judgment is final and cannot be appealed against. Domestic remedies have therefore been exhausted. On 18 September 2011, the board of the Cooperative decided that the authors had to slaughter all of their reindeer starting on 26 September 2011.

2.21 The authors add that in recent years two issues have caused tension between them and the other members of the Cooperative. One concerns the way pastures have been divided between the two herding groups by a fence, leading to difficulties for the Nellim group to carry out traditional Sami reindeer herding and being arguably one reason for the higher calf losses of the group. The fence makes it impossible for the Nellim herd to move along their natural migration routes and return to their winter grazing grounds after the summer time. The Ivalo herding group having the major vote in the cooperative keeps the fence closed that time of the year. The other issue concerns the forestry operations of the Finnish Forest Service. The traditional Sami reindeer herding depends on natural forest and is adversely affected by forestry, which is why the Nellim group is opposed to logging and other forestry measures in their area. The Ivalo group is the only herding group within the Sami Homeland in Finland that executes extensive reindeer feeding and where reindeer are herded using non-Sami methods. As a result, this herding group is less vulnerable to forestry. The Ivalo group and, hence, the Ivalo cooperative has actively been against the actions of the Nellim group and other Sami Herding cooperatives to decrease forestry operations by the Forest Service.

2.22 In 2010, a lawsuit initiated by the Paadars against the Forest Service resulted in a settlement between the two parties and most of the remaining forests around Nellim were saved for the purpose of reindeer herding. However, if the Paadars lose their reindeer, the agreement will become void, since, according to the agreement, the forests are excluded from forestry only in so far the Paadars or their relatives are reindeer herders.

The complaint

3.1 The authors allege that the State party violated article 14, paragraph 1 of the Covenant when the Supreme Administrative Court rejected the appeal without weighing the legal claims, arguments and facts of the case. Furthermore, by requesting for a statement from the Government, the Court subordinated itself to the Executive, thus violating the authors' right to a fair trial.

3.2 The forced slaughtering of their reindeer entails violations of the authors' rights under article 27 of the Covenant to enjoy their own indigenous culture with other Sami. The authors and their families cannot continue their way of life after the slaughtering, because there will no longer be reindeer left in the families. This would mean the end of the authors' and their families' Sami livelihood. When taking decisions the cooperative is obliged to take into consideration the preservation of the Sami culture, in accordance with section 17 subsection 3 of the Finnish Constitution and article 27 of the Covenant.

3.3 The decision of the Ivalo Reindeer Cooperative, a public law entity, to slaughter the authors' reindeer, is discriminatory both in its purpose and effects, in violation of article 26 of the Covenant. The authors have been targeted for disproportionate slaughtering of their reindeer because of their Sami way of herding, their Sami ethnicity and their fight against further logging by the Forestry Service in their traditional lands. Even if the discriminatory intent cannot be demonstrated through evidence admissible in court, the effect of the slaughtering would be discriminatory as it affects exclusively those members of the Cooperative who belong to the Sami indigenous people and use the traditional and culturally constitutive Sami herding methods.

3.4 The threat faced by the authors to have their reindeer slaughtered due to a Reindeer Husbandry Act which does not recognize traditional Sami reindeer herding is the result of lack of recognition of the Sami land rights by the State party. The authors recall, in this respect, the concluding observations on the fifth periodic report of Finland in which the Committee indicated that the State party should, in conjunction with the Sami people, swiftly take decisive action to arrive at an appropriate solution to the land dispute with due regard for the need to preserve the Sami identity in accordance with article 27 of the

Covenant.⁴ The authors also refer to the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, James Anaya, in which he indicated that “Finland should step up its effort to clarify and legally protect Sami rights to land and resources. In particular, Finland should ensure special protection for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people”.⁵

3.5 The authors add that the Anar Sami language is under acute threat as there are only 300 people who speak it. The survival of the language depends on communities in which the language is used in collective practices. Nellim is one of the most important villages for the language, and reindeer husbandry practiced by the Nellim herding group is an essential collective practice for Sami language speakers. If the planned slaughters are carried out, the Nellim herding group and reindeer herding as a traditional Sami livelihood in Nellim village will cease to exist, as the village depends on reindeer husbandry and small-scale tourism for its survival. Accordingly, the future of the group and of the village as a whole – and thereby of the Anar Sami language- is under threat.

The State party’s observations on admissibility and merits

4.1 By note verbale of 22 November 2011, the State party indicated that it had no objections concerning the admissibility of the present communication. On 23 March 2012, the State party submitted observations on the merits.

4.2 The State party refers to Sections 21 and 22 of the Reindeer Husbandry Act. It also refers to the Government Bill for the Reindeer Husbandry Act (HE 244/1989), according to which the circumstances and practices of reindeer herding differ according to the areas. In the mountain areas they are part of the Sami culture and show local special features. The Bill also indicates that reindeer herding as a whole involves so many features in common that it would not be appropriate to include in the Act different provisions for different areas but only provisions applicable to all reindeer herding.

4.3 Section 14 of the Game Animal Damages Act (105/2009) has established a new compensation system, according to which compensation should be paid for losses of reindeer calves, even if the remains are not found. The compensation is payable for the period between the calving and the last day of the next November. It is calculated for each cooperative on the basis of the producer price of reindeer meat, the estimated calving percentage in the herding area, the number of female reindeer in the territory of the cooperative and the estimated percentage of calf mortality caused by big wild animals in that territory. The compensation for other reindeer found killed is multiplied by 1.5. If the cooperative has suffered exceptionally severe losses the amount of compensation is threefold.

4.4 Regarding the national proceedings in the present case, the Supreme Administrative Court, in its judgment of 11 February 2011, stated that the decision of the cooperative to reduce the number of reindeer should be assessed from the standpoint of equality, both among all reindeer owners on one hand and the Sami owners on the other. Failure to respect the requirements of equality had not been substantiated. As for the Rovaniemi Administrative Court, the judgment of 25 January 2002 indicated that, in the long term, compliance with Section 21 of the Act should contribute to maintaining the opportunities for reindeer herding, which is part of Sami culture. Thus, the decision on forced slaughter

⁴ CCPR/CO/82/FIN, of 2 December 2004, paragraph 17.

⁵ A/HRC/18/35/Add.2, para. 84.

taken by the cooperative could not be considered to violate the Constitution or the Covenant.

4.5 Since 2000, the maximum permitted number of reindeer for the Ivalo cooperative has been 6,000, and the maximum permitted number for an individual owner has been 500. According to the State party, these numbers suffice for carrying on traditional Sami reindeer herding.

4.6 In the herding year 2004-2005 the living reindeer totalled 6,080. As a result, on 30 July 2005, the cooperative decided to adopt a slaughter plan for the herding year 2005-2006. Through the appeals filed by Mr. Kalevi Paadar, the conformity of the slaughter plan for the herding year 2005-2006 with the requirements of the Act was confirmed by the judgment of the Supreme Administrative Court. On 31 May 2006 the cooperative adopted a new slaughter plan. On 31 May 2007, the cooperative adopted a slaughter list, which indicated, in respect of each shareholder, their so-called arrears, i.e., the reindeer not slaughtered earlier, and the so called extras, i.e., the reindeer slaughtered earlier in excess of the slaughtering obligation. No complaints were made against these decisions.

4.7 On 7 October 2007, the cooperative decided to enforce the decisions. The authors complained with respect to this latest decision to the Rovaniemi Administrative Court. On 12 October 2007, the Court stayed the enforcement. However, on 19 October 2007 the Court dismissed the case because the authors had not filed a complaint against the slaughter plan which was at the origin of the decision on forced slaughter and which had been approved in a meeting of the cooperative.

4.8 It appears from both parties' pleadings to the Supreme Administrative Court that most herders in the cooperative are Sami people. Furthermore, according to the judgment of the Rovaniemi Administrative Court, the cooperative has calculated that at its meetings native Sami people usually hold an average of 58 to 60 percent of all rights to vote.

4.9 Following the authors' appeal, the Supreme Administrative Court, on 23 October 2007, issued an interim measure prohibiting the slaughtering. On 2 April 2008, the Court quashed the judgement of the Rovaniemi Court and sent the matter to the latter for reconsideration. It held that the decision of 7 October 2007 could be complained of because it was the first decision on reindeer slaughter taken under section 22, subsection 4 of the Act.

4.10 The Rovaniemi Administrative Court reconsidered the complaint but rejected it on 15 August 2008. It nevertheless upheld the prohibition against the enforcement until a final decision would be adopted on the case. The authors appealed this judgment to the Supreme Administrative Court who rejected it on 11 February 2011.

4.11 Reindeer herding cooperatives have been introduced as administrative units because they are needed for organising the herding for different purposes, for instance agricultural aid and compensation for damage caused by big wild animals. The units are large because they have been formed according to the local needs of reindeer herding. Most cooperatives have both Sami and non Sami owners as shareholders. Due to the fact that under Finnish law it is prohibited to register ethnicity, it is not possible to provide official statistics on the number of Sami and non Sami shareholders of different cooperatives.

4.12 The authors indicate that the Nellim reindeer herding group has aspired to separate from the Ivalo cooperative and form their own. However, the State party indicates that the group has not managed to do so because within the Ivalo cooperative no agreement has been reached on how to delimit the territory of the Nellim group.

4.13 The authors essentially base their communication on the practice of traditional Sami reindeer herding. However, they do not indicate what they mean by this practice. It does not appear whether they refer to a nomadic way of life, with herders moving from one place to

another with the herd. Normally, the herders move by motor vehicles and live in stationary buildings constructed for herding purposes.

4.14 Despite the possible various traditional, developing, mixed and modern methods of reindeer herding, all reindeer herders share the same responsibility of keeping the number of their living reindeer within the prescribed maximum number in order to ensure the sustainable production capacity of the winter pasture of the cooperative. The reindeer population in Finland is dominated by female animals, in order to maximise the production of calves and the income of the herders. The high proportion of calves has made it possible to increase the number of reindeer. As a rule, the calves are slaughtered before the reindeer move on to winter pastures, which helps to avoid excessive consumption of these pastures. The purpose of these practices has been to improve the profitability of reindeer herding and thus to safeguard the future of the livelihood.

4.15 According to the judgment of 11 February 2011, the cooperative has Sami members who have fulfilled their slaughtering obligation. It thus appears that the present case does not concern unequal treatment between Sami and non-Sami herders but a divergence between members of the cooperative. The judgment shows that there are very different opinions concerning the actual circumstances within the cooperative and diversity in reindeer herding.

4.16 The Ministry of Agriculture and Forestry has investigated the reindeer damage caused by wild animals in the territory of the Ivalo cooperative and found that it does not differ essentially from the damage elsewhere in the herding area or the Sami homeland. An incident took place in 2004, when a bear caused exceptionally severe damage during the calving period. However, the incident did not occur in the Nellim territory but in the southern part of the cooperative's territory. Under Section 41 of the Hunting Act, it is possible to apply for an exceptional licence to kill a big wild animal that causes damage. The authors have not applied for an exceptional licence. In autumn, they have the opportunity to hunt bears in the reindeer herding territory within an established quota. During the period covered by the communication the quota was not completed so quickly that the authors could not benefit from it. The competent authorities are not aware of any applications for licenses to kill wild animals causing reindeer damage specifically in the Nellim territory.

4.17 The authors indicate that they carry out reindeer herding by traditional shepherding. According to the State party, this method should enable the herders to monitor the extent of the reindeer damage caused by big wild animals much more efficiently than the method of completely free pasturing. The Regional Council of Lapland has specifically proposed shepherding as one means to reduce reindeer damage caused by wild animals.

4.18 With respect to the authors' claims under article 14, paragraph 1 of the Covenant, the State party indicates that the national courts, including the Supreme Administrative Court, thoroughly assessed the authors' complaint, also from the standpoint of the special rights of the Sami, taking into account the international human rights obligations, especially those deriving from the Covenant. They appropriately and extensively reasoned their judgments. A fair trial, as set out in article 14, is guaranteed when the court in question, such as the Supreme Administrative Court in the present case, obtains all necessary information for a thorough examination of the case. The guarantees for a fair trial ensure that all parties to legal proceedings have had the right to be heard.

4.19 The State party concludes that the facts of this case do not reveal any breach of articles 14, 26 and 27 separately, nor article 27, read in the light of article 1 of the Covenant. Neither can there be any question concerning article 27, read in the light of article 1, nor any violation in this respect.

Author's comments on the State party's observations

5.1 On 18 June 2012, the authors submitted comments on the State party's observations. They reiterate that the judgment of the Supreme Administrative Court means the end of reindeer herding for the Nellim herding group, a fact that the State party does not dispute. The complete loss of a whole reindeer herding group means a substantial impact and, accordingly, a denial of the right to enjoy the Sami culture. The pastures and the circumstances of the Nellim herding group and the Ivalo herding group are different, a fact which should be taken into consideration in decisions concerning, for instance, forced slaughtering. The law and its application lead to different and unequal treatment of these two groups.

5.2 In its observations the State party does not consider the role of predators in the issue at hand. The authors disagree with the State party's assessment that the compensation provided to cover losses is sufficient and constitutes an effective manner to tackle the problems caused by exceptionally harmful animals. First of all, the loss of calves in Nellim is highly significant and takes place on a roughly the same level every year. Secondly, most of the losses are caused by bears belonging to a well-numbered population who live in the Paatsjoki river valley. Between the years 2000 to 2008, the survival rate of calves in the Paatsjoki reindeer herding cooperative has been 52%, i.e. almost half of the calves born disappear in the forest before the counting time in autumn. Within the same period, the survival rates for the four authors have been: 53% (Kari Alatorvinen), 56% (Eero Paadar), 58% (Kalevi Paadar) and 58% (Veijo Paadar). In contrast to these rates, the survival rate of the Ivalo Cooperative as a whole is 66%.

5.3 Even though the difference in calf survival rates between the Nellim group and the cooperative does not look significant at first glance, it is enough to make it impossible for the Nellim herders to fulfil slaughter quotas set by the cooperative. The Cooperative's rate of 66% includes also the much lower rates of the Nellim group, which means that the difference is higher than what appears when comparing plain numbers.

5.4 In 2011, the Regional Council of Lapland issued a report on predators and their impact on reindeer herding. According to it, due to the current number of predators, economically profitable reindeer husbandry has collapsed in the area that suffers most damage. The bear population in the area has increased from 170 individuals in 1995 to 370-420 in 2010, i.e. 120-150 per cent. These numbers may even be higher, as there are fewer persons recording predator findings in northern Finland than in other parts of the country. The report also indicates that the damages occurring in summer, for instance those caused by bear, are extremely difficult to locate and document due to rapid utilization of carcasses by predators and scavengers and to decomposing processes.

5.5 In relation to the new compensation system that should cover the losses of calves without any documentation required (Game Animal Damages Act 105/2009), the Council points out that the function of this instrument has proved to be inadequate and problematic. The authors point out that this statement contradicts the State party's observation that the new system has clearly improved the position of reindeer owners because the compensation sums have risen although the damage has decreased. The report of the Regional Council states that the slight decrease in damages that has taken place after the peak year of 2007 is caused by the falling number of reindeer, precisely due to predators. According to a scientific study quoted by the Council, the slaughter volumes have collapsed at the same time in those parts of the southern and eastern reindeer husbandry areas that suffer from the most severe predator damages. There are now 27 cooperatives suffering from predator problems, i.e. almost half of all reindeer herding cooperatives in Finland.

5.6 The compensation system for calf losses introduced by the Game Animal Damages Act was not yet in force when the slaughter decisions of the Ivalo cooperative referred to in

the present communication were taken. However, even if the compensation system worked properly the problem raised by the authors would not be solved. The herders who would lose significantly more calves to predators than the majority in the Cooperative would still need to slaughter their productive basis, i.e. adult female reindeer in order to fulfil their slaughter quota. Monetary compensation, even if noteworthy, could not replace the loss of livelihood. Furthermore, according to the report of the Regional Council of Lapland compensation for calf losses is in fact far from noteworthy and does not cover real losses. For example, in 2011, regarding the Paatsjoki cooperative, the compensated share of the total number of calves born was only 6 per cent while the real annual loss of calves was close to 50 per cent.

5.7 The Ministry of Foreign Affairs requested the Sami Parliamentary Council to comment on the forced slaughter in the Nellim herding group. In its response, dated 23 March 2012, the Council states that the Reindeer Husbandry Act does not recognize Sami reindeer herding, despite the fact that, under Section 17(3) of the Constitution of Finland, the Sami people have a right to maintain and develop their own language and culture. Furthermore, the Government Bill on the Sami Parliament Act and the amendment to the Constitution stated that reindeer herding, fishing and hunting are part of the Sami culture and traditional Sami livelihoods. The Supreme Administrative Court ruling focuses merely on the formal method of performing the reduction in the number of reindeer and fails to take a stand on the main argument of the authors i.e. that the cooperative's decision on forced slaughtering violates article 27 of the Covenant. The authors have therefore been denied a fair trial, under article 14, paragraph 1 of the Covenant. The Sami Parliament is of the view that all Sami reindeer herders and members of their families must be able to practice reindeer husbandry in the Sami home area as part of their livelihood and culture and that inadequate national legislation obstruct or threaten this right. Through reindeer husbandry, the Sami language and Sami communities develop and remain viable. The authors' right to enjoy their own language is also violated by the cooperative's decision on forced slaughter.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has expressed no objections regarding admissibility and that domestic remedies have been exhausted. As all admissibility criteria have been met the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

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

7.2 The Committee notes the authors claim that their right to a fair trial under article 14, paragraph 1 of the Covenant has been violated because the Supreme Administrative Court rejected their appeal without weighing their legal claims, arguments and facts, and by

requesting a statement from the Government, the Court subordinated itself to the Executive. The Committee considers that the materials made available to it do not suggest that the courts acted arbitrarily in evaluating the facts and evidence in the authors' case or that the proceedings were flawed and amounted to a denial of justice. The Committee therefore does not find that the facts complained of constitute a violation of the author's rights under article 14, paragraph 1 of the Covenant.

7.3 The authors claim to be victims of violation of articles 26 and 27 in that the decisions on the forced slaughter of their reindeer taken in 2007 by the Ivalo Reindeer Cooperative, in application of Section 22 of the Reindeer Husbandry Act, had discriminatory effects against them. When deciding on the number of reindeer to be slaughtered in order to respect the maximum number of reindeer allowed to the Cooperative and to each shareholder, the Cooperative did not take into consideration their traditional Sami methods of herding and the fact that such methods involved a higher number of calf loss. As a result, the reduction percentage imposed by the Cooperative on all stakeholders on the basis of the number of reindeer existing at the beginning of the herding year, had a negative impact upon them because, at the time of slaughtering in autumn, their herds had been subjected to heavier losses than the rest of stakeholders due to predators.

7.4 The State party indicates that, according to the judgment of the Supreme Administrative Court, the Cooperative has Sami members who have fulfilled their slaughtering obligation. It thus appears that the present case does not concern unequal treatment between Sami and non-Sami herders but a divergence between members of the cooperative. The judgment also shows that there are very different opinions concerning the actual circumstances within the cooperative and diversity in reindeer herding.

7.5 For the Committee it is undisputed that the authors are members of a minority within the meaning of article 27 and, as such, have the right to enjoy their own culture. It is further undisputed that reindeer husbandry is an essential element of their culture. In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27 if they are an essential element of the culture of an ethnic community. The Committee also recalls that article 27 requires that a member of a minority shall not be denied his right to enjoy his culture and that measures whose impact amount to a denial of the right will not be compatible with the obligations under article 27.⁶

7.6 The Committee recalls article 6.2 of General Comment No. 23, according to which "although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture (...), in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria."⁷

⁶ Communication No. 511/1992, *Imari Länsman et al. v. Finland*, Views adopted on 26 October 1994, paragraphs 9.2 and 9.4 ; communication No. 671/1995, *Jouni E. Länsman et al. v. Finland*, Views adopted on 30 October 1996, paragraph 10.2; communication No. 1023/2001, *Jouni Länsman et al v. Finland.*, Views adopted on 17 March 2005, paragraph 10.1.

⁷ CCPR/C/21/Rev.1/Add.5, General comment No. 23: Article 27 (Rights of minorities).

7.7 In the present case the authors claim that their calf losses are higher than those of the Ivalo group. However, the materials submitted to the Committee do not contain figures in that respect. The authors provide some figures on the amount of their reindeer and the reduction imposed by the Cooperative with respect to 2010-2011, but not with respect to 2007 and earlier. It is also unclear what was the progression of the imposed reduction of their herds prior to 2007 and in comparison to other members of the Cooperative, and how, in concrete terms, they have come to a situation where all their reindeer has to be slaughtered. In the absence of information in that respect the Committee is not in a position to conclude, given the limited evidence before it, that the impact of the reindeer reduction methods of the Ivalo Cooperative upon the authors was such as to amount to a denial of the author's rights under articles 26 and 27. Despite this conclusion, the Committee deems it important to recall 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.⁸

8. 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 it do not reveal a breach of articles 26; and 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.]

⁸ Communication No. 671/1995, *Jouni E. Lansman et al. v. Finland*, cit., paragraph 10.7

Appendix

Individual opinion of Committee members Mr. Walter Kälin, Mr. Victor Manuel Rodríguez-Rescia, Ms. Anja Seibert-Fohr and Mr. Yuval (dissenting)

We are unable to agree with the view rendered by the Committee that the facts before it do not reveal a breach of article 27 of the Covenant. We regret that the decision of the majority fails to sufficiently take into account the facts of the case. According to undisputed facts submitted by the authors, the board of the Ivalo Reindeer Herding Cooperative decided that the authors – members of the Nellim herding group - have to slaughter all of their reindeer starting on 26 September 2011. The decision to slaughter the author's reindeer results from the cooperative system established by the state under the Reindeer Husbandry Act of 1990. Pursuant to Section 21(1) of the Act, the Ministry of Agriculture and Forestry determines the maximum number of living reindeer a reindeer herding co-operative may keep in its territory. Under Section 22 (1) of the Act, if the number of living reindeer of a cooperative or a reindeer owner exceeds a maximum number the cooperative must decide on the reduction of the number of reindeer to the maximum allowable number. If the owner does not reduce the number of his or her reindeer in accordance with the decision of the cooperative, the chairman of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner. In the present case the authors' complaint against the cooperative's decision to carry out the reduction on behalf of the owner on the basis of the slaughter plan adopted by the cooperative for the herding year 2007-2008 was dismissed by the Administrative Court of Rovaniemi and the Supreme Administrative Court. As a result, the authors now face the slaughter of all of their reindeer.

Reindeer husbandry is an essential element of the authors' culture and is thus protected by article 27 of the Covenant, pursuant to which persons belonging to ethnic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture. The Committee's approach in the past has been to inquire whether interference by the State party in that husbandry is so substantial that it has failed to properly protect the authors' right to enjoy their culture.¹

In the present case, the slaughter of all reindeers constitutes a particularly grave interference with the authors' rights under the Covenant, since it would deprive them of their livelihood which is essential for their ability to continue to enjoy their traditional culture. We recognize that this interference does not result from a direct order by an organ of the State party to slaughter their herds but is a consequence of the decision taken by the Ivalo Reindeer Herding Cooperative. However, under Article 27 of the Covenant a State party is not only under an obligation to refrain from taking measures that amount to a denial of the right of members of a minority to enjoy their culture but is also obliged to take positive measures of protection "against the acts of other persons within the State party".² In this regard, we accept that it is reasonable and consistent with article 27 of the Covenant to allow herding cooperatives to impose slaughtering quotas on its members to achieve the purposes of the Reindeer Husbandry Act to restrict the number of reindeers for economic

¹ Communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, Views adopted on 24 October 2001, para. 7.5

² CCPR/C/21/Rev.1/Add.5, General comment No. 23 (1994): Article 27 (Rights of minorities), para. 6.1.

and ecological reasons and to secure the preservation and well-being of the Sami minority.³ However, in cases of an apparent conflict between the legislation, which seems to protect the rights of the minority as a whole, and its application to a single member of that minority, the Committee has been guided by the consideration that restrictions upon the right of individual members of a minority must be shown to not only have a reasonable and objective justification in the particular circumstances of the case but also to be necessary for the continued viability and welfare of the minority as a whole.⁴ Neither has the State party shown that slaughtering all animals of the authors was necessary to achieve this goal nor does the material in front of the Committee allow us to conclude that in the present case the objective of restricting the number of reindeer could not have been achieved otherwise, and that attaining this objective justifies the decision to slaughter all of the authors' reindeer despite its substantial impact on the authors' right to enjoy their culture. For these reasons we conclude that the Committee should have found the State party in violation of its obligations under article 27 of the Covenant.

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

³ See communication No. 197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, para. 9.5

⁴ See communication No. 197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, para. 9.8; communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para.16.