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Fifty-second session

VIEWS

Communication No. 511/1992

Submitted by : Ilmari Länsman et al.
[represented by counsel]

Victims : The authors

State party : Finland

Date of communication : 11 June 1992 (initial submission)

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(Decision on admissibility,
dated 14 October 1993)

Date of adoption of Views : 26 October 1994

On 26 October 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, in respect of communication No. 511/1992. The text of the Views is appended to the present document.

[ANNEX]

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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
- FIFTY-SECOND SESSION -

concerning

Communication No. 511/1992

Submitted by : Ilmari Länsman et al.
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Victims : The authors

State party : Finland

Date of communication : 11 June 1992 (initial submission)

Date of decision on admissibility : 14 October 1993

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

Meeting on 26 October 1994,

Having concluded its consideration of communication No. 511/1992
submitted to the Human Rights Committee by Ilmari Länsman et al. under the
Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The authors of the communication are Ilmari Länsman and forty-seven other members of the Muotkatunturi Herdsmen's Committee and members of the Angeli local community. They claim to be the victims of a violation by Finland of article 27 of the International Covenant on Civil and Political Rights. They are represented by counsel.

The facts as presented by the authors :

2.1 The authors are all reindeer breeders of Sami ethnic origin from the area of Angeli and Inari; they challenge the decision of the Central Forestry Board to pass a contract with a private company, Arktinen Kivi Oy (Arctic Stone Company) in 1989, which would allow the quarrying of stone in an area covering ten hectares on the flank of the mountain Etelä-Riutusvaara. Under the terms of the initial contract, this activity would be authorized until 1993.

2.2 The members of the Muotkatunturi Herdsmen's Committee occupy an area ranging from the Norwegian border in the West, to Kaamanen in the East, comprising both sides on the road between Inari and Angeli, a territory traditionally owned by them. The area is officially administered by the Central Forestry Board. For reindeer herding purposes, special pens and fences, designed for example to direct the reindeers to particular pastures or locations, have been built around the village of Angeli. The authors point out that the question of ownership of lands traditionally used by the Samis is disputed between the Government and the Sami community.

2.3 The authors contend that the contract signed between the Arctic Stone Company and the Central Forestry Board would not only allow the company to extract stone but also to transport it right through the complex system of reindeer fences to the Angeli-Inari road. They note that in January of 1990, the company was granted a permit by the Inari municipal authorities for the extraction of some 5,000 cubic metres of building stone, and that it obtained a grant from the Ministry of Trade and Industry for this very purpose.

2.4 The authors admit that until now, only some limited test-quarrying has been carried out; by September 1992, some 100,000 kilograms of stone (approximately 30 cubic metres) had been extracted. The authors concede that the economic value of the special type of stone concerned, anorthosite, is considerable, since it may replace marble in, above all, representative public buildings, given that it is more resistant to air-borne pollution.

2.5 The authors affirm that the village of Angeli is the only remaining area in Finland with a homogenous and solid Sami population. The quarrying and transport of anorthosite would disturb their reindeer herding activities and the complex system of reindeer fences determined by the natural environment. They add that the transport of the stone would run next to a modern slaughterhouse already under construction, where all reindeer slaughtering must be carried out as of 1994, so as to meet strict export standards.

2.6 Furthermore, the authors observe that the site of the quarry, mountain Etelä-Riutusvaara, is a sacred place of the old Sami religion, where in old times reindeer were slaughtered, although the Samis now inhabiting the area are not known to have followed these traditional practices for several decades.

2.7 As to the requirement of exhaustion of domestic remedies, the authors point out that 67 members of the Angeli local community appealed, without

success, against the quarrying permit to the Lapland Provincial Administrative Board as well as to the Supreme Administrative Court¹, where they specifically invoked article 27 of the Covenant. On 16 April 1992, the Supreme Administrative Court dismissed the appeal without addressing the alleged violations of the Covenant. According to the authors, no further domestic remedies are available.

2.8 Finally, at the time of submission of the communication in June 1992, the authors, fearing that further quarrying is imminent, requested the adoption of interim measures of protection, under rule 86 of the Committee's rules of procedure, so as to avoid irreparable damage.

The complaint :

3.1 The authors affirm that the quarrying of stone on the flank of the Etelä-Riutusvaara mountain and its transportation through their reindeer herding territory would violate their rights under article 27 of the Covenant, in particular their right to enjoy their own culture, which has traditionally been and remains essentially based on reindeer husbandry.

3.2 In support of their contention of a violation of article 27, the authors refer to the Views adopted by the Committee in the cases of Ivan Kitok (No. 197/1985) and B. Ominayak and members of the Lubicon Lake Band v. Canada (No. 167/1984), as well as to ILO Convention No.169 concerning the rights of indigenous and tribal people in independent countries.

The State party's information and observations and counsel's comments thereon :

4.1 The State party confirms that quarrying of stone in the area claimed by the authors was made possible by a permit granted by the Angeli Municipal Board on 8 January 1990. Pursuant to Act No. 555/1981 on extractable land resources, this permit was at the basis of a contract passed between the Central Forestry Board and a private company, which is valid until 31 December 1993.

4.2 The State party opines that those communications to the Committee who, in the matter under consideration, have applied both to the Lapland Provincial Administrative Board and to the Supreme Administrative Court have exhausted all available domestic remedies. As the number of individuals who appealed to the Supreme Administrative Court is however lower than the number of those who filed a complaint with the Committee, the State party considers the communication inadmissible on the ground of non-exhaustion of domestic remedies in respect of those authors who were not a party to the case before the Supreme Administrative Court.

4.3 The State party concedes that "extraordinary appeals" against the decision of the Supreme Administrative Court would have no prospect of success, and that there are no other impediments, on procedural grounds, to the admissibility of the communication. On the other hand, it submits that the authors' request for the adoption of interim measures of protection was "clearly premature", as only test quarrying on the contested site has been carried out.

¹ It should be noted that not all of the authors of the communication before the Committee appealed to the Supreme Court.

5.1 In his comments, counsel rejects the State party's argument that those authors who did not personally sign the appeal to the Supreme Administrative Court failed to exhaust available domestic remedies. He argues that "[a]ll the signatories of domestic appeals and the communication have invoked the same grounds, both on the domestic level and before the Human Rights Committee. The number and identity of signatories was of no relevance for the outcome of the Supreme Court judgment, since the legal matter was the same for all the signatories of the communication...".

5.2 Counsel contends that in the light of the Committee's jurisprudence in the case of Sandra Lovelace v. Canada, all the authors should be deemed to have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol. In this case, he recalls, the Committee decided that the Protocol does not impose on authors the obligation to seize the domestic courts if the highest domestic court has already substantially decided the question at issue. He affirms that in the case of Mr. Lämsmäki and his co-authors, the Supreme Administrative Court has already decided the matter in respect of all the authors.

5.3 In further comments dated 16 August 1993, counsel notes that the lease contract for Arktinen Kivi Oy expires at the end of 1993, and that negotiations for a longer lease are underway. If agreement on a long-term lease is reached, Arktinen intends to undertake considerable investments, inter alia for road construction. Counsel further notes that even the limited test quarrying carried out so far has left considerable marks on Mount Etelä-Riutusvaara. Similarly, the marks and scars left by the provisional road allegedly will remain in the landscape for hundreds of years, because of extreme climatic conditions. Hence, the consequences for reindeer herding are greater and will last longer than the total amount of stone to be taken from the quarry (5,000 cubic metres) would suggest. Finally, counsel reiterates that the location of the quarry and the road leading to it are of crucial importance for the activities of the Muotkatunturi Herdsmen's Committee, because their new slaughterhouse and the area used for rounding up reindeers are situated in the immediate vicinity.

The Committee's admissibility decision :

6.1 During its 49th session, the Committee considered the admissibility of the communication. It noted that the State party did not object to the admissibility of the complaint in respect of all those authors which had appealed the quarrying permit both to the Lapland Provincial Administrative Board and to the Supreme Administrative Court of Finland, and that only in respect of those authors who had not personally appealed to the Supreme Administrative Court did it contend that domestic remedies had not been exhausted.

6.2 The Committee disagreed with the State party's reasoning and recalled that the facts at the basis of the decision of the Supreme Administrative Court of 16 April 1992 and of the case before the Committee were identical; had those who did not personally sign the appeal to the Supreme Administrative Court done so, their appeal would have been dismissed along with that of the other appellants. It was unreasonable to expect that if they applied to the Supreme Administrative Court now, on the same facts and with the same legal arguments, this court would hand down another decision. The Committee reiterated its earlier jurisprudence that wherever the jurisprudence of the highest domestic tribunal has decided the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts, authors are not

required to exhaust domestic remedies, for the purposes of the Optional Protocol. The Committee therefore concluded that the requirements of article 5, paragraph 2(b), of the Optional Protocol had been met.

6.3 The Committee considered that the authors' claims pertaining to article 27 had been substantiated, for purposes of admissibility, and that they should be considered on their merits. As to the authors' request for interim measures of protection, it noted that the application of rule 86 of the rules of procedure would be premature but that the authors retained the right to address another request under rule 86 to the Committee if there were reasonably justified concerns that quarrying might resume.

6.4 On 14 October 1993, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under article 27 of the Covenant.

State party's submission on the merits and counsel's comments thereon :

7.1 In its submission under article 4, paragraph 2, dated 26 July 1994, the State party supplements and corrects the facts of the case. Concerning the issue of ownership of the area in question, it notes that the area is state-owned, as it had been awarded to the State in a general reparceling. It was inscribed as state-owned in the land register and is regarded as such in the jurisprudence of the Supreme Court (judgment of 27 June 1984 dealing with the determination of water limits in the Inari municipality). Powers inherent in the ownership are used by the Finnish Forestry and Park Service (formerly the Central Forestry Board), which is entitled, inter alia, to construct roads.

7.2 The State party further provides information on another case involving planned logging and road construction activities in the Inari District, which had been decided by the Inari District Court and the Rovaniemi Court of Appeal. These courts assessed the matter at issue in the light of article 27 of the Covenant but concluded that the contested activities did not prevent the complainants from practising reindeer herding.

7.3 As to the merits of the authors' claim under article 27, the State party concedes that the concept "culture" in article 27 also covers reindeer herding as an "essential component of the Sami culture". It examines whether the quarrying permit, its exploitation, and the contract between the Central Forestry Board and Arktinen Kivi Oy violates the authors' rights under article 27. In this connection, several provisions of Act No. 555/1981 on Extractable Land resources are relevant. Thus, Section 6 stipulates that an extraction (quarrying) permit may be delivered if certain conditions laid down in the Act have been met. Section 11 defines these conditions as "orders which the applicant must follow in order to avoid or restrict damages caused by the project in question". Under Section 9, subsection 1, the contractor is liable to compensate the owner of real estate for any extraction of land resources which causes (environmental or other) damage which cannot be qualified as minor. Section 16, litera 3, allows the State authority to amend the conditions of the initial permit or to withdraw it, especially when the extraction of land resources has had unpredictable harmful environmental effects.

7.4 As to the permit issued to Arktinen Kivi Oy, the State party notes that it is valid until 31 December 1999, but only if the Finnish Forestry and Park Service upholds the contract until that date. Another condition requires that during and after the quarrying, the area in question must be kept "clear and safe". Condition No. 3 lays down that every year, quarrying should be carried

out within the period 1 April to 30 September, as requested by the Muotkatunturi Herdsmens' Committee in its letter of 5 November 1989 to the Inari municipality. This is because reindeers do not pasture in the area during this period. The same condition also stipulates that means of communication (transport) to and within the area must be arranged in coordination with the Herdsmens' Committee, and that any demands of the Angeli Community Committee should be given due consideration.

7.5 In October 1989, a contract between the Central Forestry Board and the company was concluded, which gave the company the right to use and extract stone in an area covering 10 hectares, to a maximum of 200 cubic metres. This contract was valid until the end of 1993. Under the terms of the contract, means of transportation/communication had to be agreed upon with the district forester. Edges of holes had to be smoothed during quarrying; after quarrying, the slopes had to be remodelled in such a way as not to constitute a danger for animals and men and not to disfigure the landscape. In March 1993, the company requested a new land lease contract; an inspection of the site on 30 July 1993 was attended by a representative of the Forest District, the company, the Angeli Community Committee, the Herdsmens' Committee, and the building inspector of Inari community. The company representatives noted that the construction of a proper road was necessary for the project's profitability; the representative of the Forest District replied that the Herdsmens' Committee and the company had to find a negotiated solution. The State party adds that the Forestry and Park Service has informed the Government that a decision on a possible new contract with the company will be taken only after the adoption of Views by the Committee in the present case.

7.6 As to actual quarrying, the State party notes that the company's activity in the area has been insignificant, both in terms of amount of extracted stone (30 cubic metres) and the extent (10 hectares) of the quarrying area on Mt. Riutusvaara. By comparison, the total area used by the Muotkatunturi Herdsmens' Committee covers 2,586 square kilometres, whereas the area fenced in for quarrying covered only approximately one hectare and is only four kilometres away from the main road. In two expert statements dated 25 October 1991 submitted to the Supreme Administrative Court, it is noted that "extraction of land resources from Etelä-Riutusvaara has, as regards its size, no significance on the bearing capacity of the pastures of the Muotkatunturi Herdsmens' Committee". Neither can, in the State party's opinion, the extraction have any other negative effects on reindeer husbandry. The Government disagrees with the authors' assertion that already limited test quarrying has caused considerable damage to Etelä-Riutusvaara.

7.7 In the above context, the State party notes that it appears from an opinion of the Environmental Office of the Lapland County Administrative Board (dated 8 May 1991) that only low pressure explosives are used to extract stone from the rock: "Extraction is carried out by means of sawing and wedging techniques ... to keep the rock as whole as possible". As a result, possible harm to the environment remains minor. Furthermore, it transpires from a statement dated 19 August 1990 from the Inari Municipal Executive Board to the County Administrative Board that special attention was paid by the Board and the company to avoid disturbing reindeer husbandry in the area. The State party refers to Section 2, subsection 2, of the Reindeer Husbandry Act, which requires that the northernmost State-owned areas shall not be used in ways which can seriously impair reindeer husbandry; it adds that the obligations imposed by article 27 were observed in the permit proceedings.

7.8 With regard to the question of road construction in the quarrying area,

the State party notes that transport of the test blocks of stone initially took place on an existing road line, with the help of one of the authors. The company only extended the road line for approximately one kilometre into another direction (not through the authors' reindeer fences), while using the existing road for transport of stone to the main road. The State party observes that the road line has thus been decided upon by the authors themselves. At a meeting on 15 October 1993 of the Inari Advisory Board, the company advised that the construction of a proper road would improve the profitability of the project; and as conceded by the Inari Municipal Board in a written submission to the Supreme Administrative Court in August 1991, the construction of such a road is technically possible without causing disturbances for reindeer husbandry.

7.9 The State party submits that in the light of the above and given that only 30 cubic metres of rock have actually been extracted, the company's activity has been insignificant in relation to the authors' rights under article 27, especially reindeer herding. Similar conclusions would apply to the possible quarrying of the total allowable extractable amount of stone and its transport over a proper road to the main road. In this context, the State party recalls the Committee's Views in Lovelace v. Canada, which state that "not every interference can be regarded as a denial of rights within the meaning of article 27 ... (but) restrictions must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant...". This principle, according to the State party, applies to the present case.

7.10 The State party concedes "that the concept of culture in the sense of article 27 provides for a certain protection of the traditional means of livelihood for national minorities and can be deemed to cover livelihood and related conditions insofar as they are essential for the culture and necessary for its survival. This means that not every measure and every effect of it, which in some way alters the previous conditions, can be construed as adverse interference in the rights of minorities to enjoy their own culture under article 27". Relevant references to the issue have been made by the Parliamentary Committee for Constitutional Law, in relation with Government Bill 244/1989, to the effect that reindeer husbandry exercised by Samis shall not be subject to unnecessary restrictions.

7.11 This principle, the State party notes, was underlined by the authors themselves in their appeal to the Lapland County Administrative Board: thus, before the domestic authorities, the authors themselves took the stand that only unnecessary and essential interferences with their means of livelihood, in particular reindeer husbandry, would raise the spectre of a possible violation of the Covenant.

7.12 The State disagrees with the statement of the authors' counsel before the Supreme Administrative Court (10 June 1991) according to which, by reference to the Committee's Views in the case of B. Ominayak and members of the Lubicon Lake Band v. Canada², every measure, even a minor one, which obstructs or impairs reindeer husbandry must be interpreted as prohibited by the Covenant. In this context, the State party quotes from paragraph 9 of the Committee's General Comment on article 27, which lays down that the rights under article 27 are "directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned...". Furthermore, the question of "historical inequities", which

² Views adopted by the Committee at its 38th session, 26 March 1990 .

arose in the Lubicon Lake Band case, does not arise in the present case. The State party rejects as irrelevant the authors' reliance on certain academic interpretations of article 27 and on certain national court decisions. It claims that the Human Rights Committee's Views in the case of Kitok³ imply that the Committee endorses the principle that States enjoy a certain degree of discretion in the application of article 27 - which is normal in all regulation of economic activities. According to the State party, this view is supported by the decisions of the highest tribunals of States parties to the Covenant and the European Commission on Human Rights.

7.13 The State party concludes that the requirements of article 27 have "continuously been taken into consideration by the national authorities in their application and implementation of the national legislation and the measures in question". It reiterates that a margin of discretion must be left to national authorities even in the application of article 27: "As confirmed by the European Court of Human Rights in many cases ..., the national judge is in a better position than the international judge to make a decision. In the present case, two administrative authorities and ... the Supreme Administrative Court, have examined the granting of the permit and related measures and considered them as lawful and appropriate". It is submitted that the authors can continue to practise reindeer husbandry and are not forced to abandon their lifestyle. The quarrying and the use of the old forest road line, or the possible construction of a proper road, are insignificant or at most have a very limited impact on this means of livelihood.

8.1 In his comments, dated 31 August 1994, counsel informs the Committee that since the initial submission of the complaint, the Muotkatunturi Herdsmen's Committee has somewhat changed its reindeer herding methods. As of spring 1994, young fawns are not kept fenced in with their mothers, so that the reindeer pasture more freely and for a larger part of the year than previously in areas north of the road between Angeli and Inari, including Southern Riutusvaara. Reindeer now also pasture in the area in April and September. Counsel adds that Southern Riutusvaara is definitely not unsuitable for reindeer pasture, as contended by the State party, as the reindeer find edible lichen there.

8.2 As to the supplementary information provided by the State party, the authors note that thus far, the companies quarrying on Mount Etelä-Riutusvaara have not covered any holes or smoothed edges and slopes after the expiry of their contracts. The authors attach particular importance to the State party's observation that the lease contract between the Central Forestry Board and Arktinen Kivi Oy was valid until the end of 1993. This implies that no contractual obligations would be breached if the Human Rights Committee were to find that any further quarrying would be unacceptable in the light of article 27.

8.3 As to the road leading to the quarry, the authors dismiss as misleading the State party's argument that the disputed road has been or would have been constructed in part "by one of the authors". They explain that the road line has been drawn by the two companies wishing to extract stone from the area. Counsel concedes however that the first company used a Sami as "employee or subcontractor in opening the road line. This is probably the reason why the person in question ... did not want to sign the communication to the Human Rights Committee".

³ Case No. 197/1985, Views adopted during the Committee's 33rd session on 27 July 1988, paragraph 9.3.

8.4 The authors criticize that the State party has set an unacceptably high threshold for the application of article 27 of the Covenant and note that what the Finnish authorities appear to suggest is that only once a State party has explicitly conceded that a certain minority has suffered historical inequities, it might be possible to conclude that new developments which obstruct the cultural life of a minority constitute a violation of article 27. To the authors, this interpretation of the Committee's Views in the Lubicon Lake Band case is erroneous. They contend that what was decisive in Ominayak was that a series of incremental adverse events could together constitute a 'historical inequity' which amounted to a violation of article 27.⁴

8.5 According to counsel, the situation of the Samis in the Angeli area may be compared with "assimilation practices", or at least as a threat to the cohesiveness of their group through quarrying, logging and other forms of exploitation of traditional Sami land for purposes other than reindeer herding.

8.6 While the authors agree that the question of ownership of the lands tracts at issue is not per se the subject matter of the case, they observe that (a) ILO Convention No. 169, although not yet ratified by Finland, has a relevance for domestic authorities which is comparable to the effect of concluded treaties (opinion No. 30 of 1993 by the Parliamentary Constitutional Law Committee) and (b) neither the general reparceling nor the entries into the land register can have constitutive effect for the ownership of traditional Sami territory. In this context, the authors note that the legislator is considering a proposal to create a system of collective land ownership by the Sami villages:

"As long as the land title controversy remains unsettled..., Finnish Samis live in a situation that is very sensitive and vulnerable in relation to any measures threatening their traditional economic activities. Therefore, the existing Riutusvaara quarry and the road to it, created with the involvement of public authorities, are to be considered a violation of article 27... The renewal of a land lease contract between the Central Forestry Board [sc.: its legal successor] and the ... company would also violate article 27".

8.7 Finally, the authors point to new developments in Finland which are said to highlight the vulnerability of their own situation. As a consequence of the Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994, foreign and transnational companies registered within the EEA obtain a broader access to the Finnish market than before. The most visible consequence has been the activity of multinational mining companies in Finnish Lapland, including the northernmost parts inhabited by Samis. Two large foreign mining companies have registered large land tracts for research into the possibility of mining operations. These areas are located in the herding areas of some Reindeer Herding Committees. On 11 June 1994, the Sami Parliament expressed concern over this development. The authors consider that the outcome of the present case will have a bearing on the operation of the foreign mining companies in question.

8.8 The information detailed in 8.7 above is supplemented by a further

⁴ In this context, the authors refer to the analysis of the Views in the Lubicon Lake Band case by Professor Benedict Kingsbury (25 Cornell International Law Journal (1992)), and by Professor Manfred Nowak (CCPR Commentary, 1993).

submission from counsel dated 9 September 1994. He notes that the activity of multinational mining companies in Northern Lapland has led to a resurgence of interest among Finnish companies in the area. Even a Government agency, the Centre for Geological Research (Geologian tutkimuskeskus) has applied for land reservations on the basis of the Finnish Mining Act. This agency has entered six land reservations of 9 square kilometres each in the immediate vicinity of the Angeli village and partly on the slopes of Mt. Riutusvaara. Two of these land tracts are located within an area which is the subject of a legal controversy about logging activities between the local Samis and the government forestry authorities.

Examination of the merits :

9.1 The Committee has examined the present communication in the light of all the information provided by the parties. The issue to be determined by the Committee is whether quarrying on the flank of Mt. Etelä-Riutusvaara, in the amount that has taken place until the present time or in the amount that would be permissible under the permit issued to the company which has expressed its intention to extract stone from the mountain (i.e. up to a total of 5,000 cubic metres), would violate the authors' rights under article 27 of the Covenant.

9.2 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 that economic activities may come within the ambit of article 27, if they are an essential element of the culture of an ethnic community⁵.

9.3 The right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In this connection, the Committee observes that article 27 does not only protect traditional means of livelihood of national minorities, as indicated in the State party's submission. Therefore, that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology does not prevent them from invoking article 27 of the Covenant. Furthermore, mountain Riutusvaara continues to have a spiritual significance relevant to their culture. The Committee also notes the concern of the authors that the quality of slaughtered reindeer could be adversely affected by a disturbed environment.

9.4 A State may understandably wish to encourage development or allow economic activity by enterprises. The scope of its freedom to do so is not to be assessed by reference to a margin of appreciation, but by reference to the obligations it has undertaken in article 27. Article 27 requires that a member of a minority shall not be denied his right to enjoy his culture. Thus, measures whose impact amount to a denial of the right will not be compatible with the obligations under article 27. However, measures that have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a denial of the right under article 27.

9.5 The question that therefore arises in this case is whether the impact of the quarrying on Mount Riutusvaara is so substantial that it does effectively deny to the authors the right to enjoy their cultural rights in

⁵ Views on communication No. 197/1985 (Kitok v. Sweden), adopted on 27 July 1988, paragraph 9.2.

that region. The Committee recalls paragraph 7 of its General Comment on article 27, according to which minorities or indigenous groups have a right to the protection of traditional activities such as hunting, fishing or, as in the instant case, reindeer husbandry, and that measures must be taken "to ensure the effective participation of members of minority communities in decisions which affect them".

9.6 Against this background, the Committee concludes that quarrying on the slopes of Mt. Riutusvaara, in the amount that has already taken place, does not constitute a denial of the authors' right, under article 27, to enjoy their own culture. It notes in particular that the interests of the Muotkatunturi Herdsmen's Committee and of the authors were considered during the proceedings leading to the delivery of the quarrying permit, that the authors were consulted during the proceedings, and that reindeer herding in the area does not appear to have been adversely affected by such quarrying as has occurred.

9.7 As far as future activities which may be approved by the authorities are concerned, the Committee further notes that the information available to it indicates that the State party's authorities have endeavoured to permit only quarrying which would minimize the impact on any reindeer herding activity in Southern Riutusvaara and on the environment; the intention to minimize the effects of extraction of stone from the area on reindeer husbandry is reflected in the conditions laid down in the quarrying permit. Moreover, it has been agreed that such activities should be carried out primarily outside the period used for reindeer pasturing in the area. Nothing indicates that the change in herding methods by the Muotkatunturi Herdsmen's Committee (see paragraph 8.1 above) could not be accommodated by the local forestry authorities and/or the company.

9.8 With regard to the authors' concerns about future activities, the Committee notes that economic activities must, in order to comply with article 27, be carried out in a way that the authors continue to benefit from reindeer husbandry. Furthermore, if mining activities in the Angeli area were to be approved on a large scale and significantly expanded by those companies to which exploitation permits have been issued, then this may constitute a violation of the authors' rights under article 27, in particular of their right to enjoy their own culture. The State party is under a duty to bear this in mind when either extending existing contracts or granting new ones.

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