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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2950/2017*, **, ***

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| <i>Communication submitted by:</i> | Klemetti Käkkäläjärvi et al. (represented by the Saami Arvvut Organization) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Finland |
| <i>Date of communication:</i> | 23 March 2016 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 8 February 2017 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 2 November 2018 |
| <i>Subject matter:</i> | Right to vote in elections to the Sami Parliament |
| <i>Procedural issues:</i> | Victim status; exhaustion of remedies; non-substantiation |
| <i>Substantive issues:</i> | Right to self-determination; non-discrimination; political rights; minority rights |
| <i>Articles of the Covenant:</i> | 1, 25, 26 and 27 |
| <i>Articles of the Optional Protocol:</i> | 1 and 2 |

1. The authors of the communication are Klemetti Käkkäläjärvi (main author) and 24 other persons; 2 are Norwegian and the others are nationals of Finland. They all present themselves as members of the indigenous Sami people. The authors claim a violation by the State party of their rights under articles 1, 25, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 2012. The authors are represented by the Sami Arvvut Organization.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands-Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann.

*** An individual opinion (concurring) by Committee member Olivier de Frouville is annexed to the present Views.



The facts as presented by the authors

2.1 The Sami are an indigenous people living in the northern parts of Finland, Norway and Sweden and the north-western part of the Russian Federation. At the end of the seventeenth century, hunters, fishermen and officials of the Crown began to settle in the northern parts of Finland and to exploit and tax the natural resources there. Although the Sami culture has considerably evolved, the Sami maintain a unique cultural identity. The authors submit that the Sami culture has been under pressure, that many members of the Sami indigenous people have adopted Finnish culture and that many have faced discrimination and racism when they have supported the rights of the Sami indigenous people in public. The authors are active members of the Sami community and participate in its traditions and culture.

2.2 The Constitution of Finland contains two provisions regarding the Sami. Section 17 stipulates that “the Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture.” Section 121 states that “in their native region, the Sami have linguistic and cultural self-government, as provided by an Act”.

2.3 The Act on the Sami Parliament (No. 974/1995) defines the functioning and powers of the Parliament. Pursuant to section 5 (1) of the Act, the task of the Sami Parliament is to “look after the Sami language and culture as well as to take care of matters relating to their status as an indigenous people”. In matters pertaining to its tasks, the Sami Parliament may take initiatives and bring proposals to the authorities, as well as issue statements (sect. 5 (2)). Section 9 stipulates that:

(1) The authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern the following matters in the Sámi homeland:

- (1) community planning;
- (2) the management, use, leasing and assignment of state lands, conservation areas and wilderness areas;
- (3) applications for licences to stake mineral mine claims or file mining patents;
- (4) legislative or administrative changes to the occupations belonging to the Sámi form of culture;
- (5) the development of the teaching of and in the Sámi language in schools, as well as the social and health services; or
- (6) any other matters affecting the Sami language and culture or the status of the Sámi as an indigenous people.

(2) In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter.

2.4 The Sami Parliament is composed of 25 individuals. Elections to the Sami Parliament take place every four years and, under the Act on the Sami Parliament, every Sami has the right to vote from the age of 18. The Election Committee of the Parliament is to draw up an electoral roll of the persons with the right to vote, on the basis of the previous electoral roll and the Population Information System. The Act stipulates that “a person who before the counting of the ballots produces to the Election Committee, or on the election day produces to the polling committee, an order of the Supreme Administrative Court to the effect that he or she has the right to vote shall be reserved the opportunity to obtain the election documents and to vote”. The Act provides for a right of judicial appeal against decisions of the Election Committee and the Board of the Parliament on issues concerning inclusion on the electoral roll, so that the highest court in administrative matters, the Supreme Administrative Court, becomes the ultimate arbiter.

2.5 Section 3 of the Act states that, for the purposes of being allowed to vote in the elections for the Parliament: “A Sami means a person who considers himself a Sami

provided: (1) that he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendant of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament”.

2.6 Section 3 has been a subject of controversy. It is clear from the wording, and has been subsequently confirmed through rulings of the Supreme Administrative Court issued before 2011, that the subjective element covered by the chapeau and the objective elements mentioned in subsections 1 to 3 are cumulative in the sense that a person can be registered as a voter only if he or she both considers himself or herself as a Sami and meets at least one of the three numbered objective criteria. Furthermore, the Sami people have never accepted section 3 (2) of the Sami Parliament Act. They argue that tax records are not accurate and are not ethnic records; anyone who practiced fishing or reindeer herding in the region was registered as a taxpayer. Until 2011, the interpretation of the Court and the Sami Parliament was that section 3 (2) could not, by itself, be considered sufficient proof of a person’s status as a member of the Sami indigenous people.

2.7 Several campaigns have been organized by non-Sami persons to register non-Sami persons as voters, with the aim of influencing the composition and positions of the Sami Parliament. The Election Committee of the Sami Parliament has addressed all individual registrations so that both the self-determination of the Sami as a people and the individual rights of the applicants can be respected.

2.8 On 26 September 2011, the Supreme Administrative Court adopted four controversial decisions against the decisions of the Election Committee of the Sami Parliament. The Court gave priority to an individual’s wish to be registered as a voter over the objective criteria provided by the Act. Up until 2011, the Court’s interpretation of section 3 of the Sami Parliament Act had been compatible to that of the Election Committee. In response to the controversy, the Government set up a drafting commission to revise the Act, so that the uncertainty created could be removed. In 2013, the commission, with the participation of the Sami, agreed to a reform, which was presented to the Parliament of Finland in 2014. However, the prospects of the bill being adopted became slim and in March 2015 the Government decided to withdraw it.

2.9 In the months prior to the 2015 elections for the Sami Parliament, hundreds of people sought registration as new voters. In many cases, the Election Committee and the Board of the Sami Parliament, as the first instances of appeal, decided that those applicants did not meet the criteria of the definition of Sami. In that regard, 182 persons appealed before the Supreme Administrative Court the decision of the Board. On 30 September 2015, the Court decided to accept the applications of 93 persons.

2.10 In a majority of those decisions, the Court stated explicitly that the person did not meet any of the objective criteria spelled out in section 3. The Court resorted to the overall consideration of the person’s own “strong” opinion in considering himself or herself a Sami and ignored the explicit requirement of meeting at least one of the objective criteria. The Court justified this position as being a “constitutional rights and human rights friendly” interpretation of the law. The Court also argued that not including the appellants in the electoral roll would constitute discrimination against them.

2.11 The rulings demonstrate a lack of understanding of Sami identity, culture and way of life on the part of the Court, as many of the decisions were based on the idea that a person’s strong self-identification as Sami can be proven by factors that in fact tell very little about whether the person has any connection with the Sami culture and way of life. The Court has understood membership as an individual perception, whereas the Sami way of life is embodied by its communal structure and common heritage. A Sami is not alone, but is a part of a generational and communal chain of Sami across borders.

2.12 The Court also based its findings on the concluding observations of the Committee on the Elimination of Racial Discrimination regarding the seventeenth to nineteenth periodic reports of Finland under the International Convention on the Elimination of All Forms of Racial Discrimination, in which the Committee stated that the State party’s approach to the definition of who might be considered a Sami under the Act on the Sami

Parliament and as interpreted by the Court was too restrictive.¹ However, in its concluding observations regarding the twentieth to twenty-second periodic reports of Finland, the same Committee noted that although the Court had relied on that Committee's prior concluding observations in the 2011 decision defining who was entitled to vote for Members of the Sami Parliament, that decision gave insufficient weight to the Sami people's rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8). Accordingly, the Committee recommended that, in defining who was eligible to vote for Members of the Sami Parliament, the State party should accord due weight to the rights of the Sami people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.²

2.13 The Court took full discretionary powers upon itself and nullified the capacity of the Sami Parliament to exercise a key dimension of Sami autonomy and self-determination, namely, the right to participate in a meaningful way, but under a framework based on the rule of law, in determining who was a Sami. By departing from the wording of the statute the Court created a situation of lawlessness, discrimination and arbitrariness.

2.14 Once a person is included in the electoral roll, all descendants can be included in it. This can lead to a snowball effect where persons who do not lead a Sami way of life and do not share the Sami identity can take part in the elections. The number of persons included in the electoral roll by the Court or by the snowball effect of its findings amounts currently to 1.5 per cent of the electoral roll. There are around 10,000 Sami individuals, including minor children. According to the authors, a study by a mathematician has found that there are around 512,000 living descendants of Lapp taxpayers. According to the new interpretation applied by the Court they could potentially apply to be included in the electoral roll.

2.15 Owing to the 2011 decisions by the Court, many members of the Sami people did not vote in the 2015 elections. This includes one of the authors, who requested removal from the electoral roll on 1 October 2015.

2.16 The election results were announced by the Election Committee on 6 October 2015. One of the elected candidates was a person who had been placed on the electoral roll as a result of one of the decisions by the Court against the decisions of the Election Committee and the Board of the Sami Parliament. Furthermore, one of the persons elected to the Sami Parliament won having received a total of 81 votes, demonstrating that with such a small electoral roll, the 4 rulings of 2011 and the 93 rulings of 2015 have a direct impact.

2.17 On 18 November 2015, the Board of the Sami Parliament accepted demands to rectify the election results on the basis that the Court had erroneously accepted the 93 persons as entitled to vote. As a result, the Board decided to hold a new election in 2016 on the basis of the electoral roll certified on 20 August 2015 (prior to the Supreme Court decisions of 30 September 2015). Appeals against that decision were filed with the Supreme Administrative Court. On 13 January 2016, the Court quashed and set aside the Board's decision. The Court held that the Board had no competence to take up a matter and legal issues already adjudicated by the Court, and that the decisions of the Court were binding upon the Board. Therefore, the decision of the Board to hold new elections was unlawful.

The complaint

3.1 The authors claim that the decisions of the Supreme Administrative Court granting the right to vote to individuals who had not been considered eligible by the competent organs of the Sami Parliament amount to a direct intervention of the State party into a core area of the enjoyment and exercise of the Sami indigenous people's right to self-determination protected under article 1 of the Covenant. The Court decisions also constitute an intervention in the Sami people's right to define their own identity. In paragraph 2 of its general comment No. 12 (1984) on the right to self-determination, the Committee considers that the right of self-determination is an essential condition for the effective guarantee and

¹ CERD/C/FIN/CO/19, para. 13.

² CERD/C/FIN/CO/20-22, para. 12.

observance of individual human rights and for the promotion and strengthening of those rights. Additionally, in *Mahuika et al. v. New Zealand*, as read by the authors, the Committee held that the right to self-determination is inherently connected to article 27 and that States parties are required to provide indigenous peoples greater influence in the decision-making processes in matters that affect their natural environment, their means of subsistence and their culture.³

3.2 By including non-Sami persons in the electoral roll of the Sami Parliament, the Court has corrupted the representative value of the Parliament, affecting the right of Sami persons to effective participation in public affairs. For this reason, one of the authors decided to request removal from the electoral roll.

3.3 The Court decisions reveal a clear lack of understanding of the Sami culture and identity. However, in order for the Sami to be considered equal before the law and for courts to take informed decisions, the courts need to be able to understand the Sami identity. In the absence of this expertise in the Supreme Administrative Court, the Sami people cannot be equal before the law as mandated by article 26 of the Covenant.

3.4 On the basis of section 3, subparagraph 3, of the Act on the Sami Parliament, hundreds of the new voters' relatives may seek registration as voters in future elections, which will be an additional step in the forced assimilation of the Sami into the mainstream population through the gradual takeover of the Sami Parliament by members of the ethnically Finnish population resident in the northernmost municipalities of Finland, where members of the Sami people constitute a minority. If non-Sami people are integrated into the Sami Parliament, the institution will become a regional representative organ and will no longer represent the Sami indigenous people. This would constitute irreparable damage for the rights of the Sami under the Covenant, as it would undermine their autonomy in matters pertaining to their internationally protected rights to enjoy their culture, to political participation and to self-determination.

3.5 The intervention of the Supreme Administrative Court impedes the enjoyment by the Sami people of their right to use their language and enjoy their culture in community with other members of the group. The traditional Sami livelihoods, language and identity are endangered by discrimination and forced assimilation. In this context, the Sami Parliament is an essential institution to ensure the survival and continued development of the Sami culture. Pursuant to section 6 of the Act on the Sami Parliament, the Sami Parliament represents the Sami people in national and international matters. Section 9 imposes upon all authorities an obligation to negotiate with the Sami Parliament in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. This demonstrates how the Sami Parliament's effective functioning and capacity to adequately represent the views of the Sami people are essential for the implementation by Finland of article 27 of the Covenant. Therefore, including non-Sami persons in the electoral roll corrupts the Sami Parliament's role as a representative of Sami interests and hinders its capacity to protect the rights enshrined under article 27 of the Covenant.

3.6 In *Diergaardt et al. v. Namibia*, the Committee considered that the link of the Rehoboth community to the lands covered by its claims, although dating back 125 years, was not a relationship that would have formed a distinctive culture.⁴ The persons who were included in the electoral roll by the Supreme Administrative Court had similar arguments to those of the authors in *Diergaardt et al. v. Namibia*: they should be considered Sami because they lived, and their ancestors had lived, in the same area as the Sami people.

3.7 There are no effective domestic remedies for the authors to exhaust. Pursuant to section 26 of the Act on the Sami Parliament, only a person who considers that he or she has been unlawfully omitted from the electoral roll or that the entry on him or her in the roll is incorrect can appeal to the Supreme Administrative Court. The Court's decisions are final and the Sami Parliament is obliged to enforce them. The Sami Parliament decided that the 2015 elections were not valid. That decision was appealed to the Supreme Administrative Court, which ruled to nullify the Sami Parliament's decision. There is no

³ CCPR/C/70/D/547/1993, para. 9.5.

⁴ CCPR/C/69/D/760/1997, para. 10.6.

appeal possible against the Court's ruling. There are no additional effective remedies to exhaust.

State party's observations on admissibility

4.1 On 8 February and 28 July 2017, the State party submitted observations on admissibility. It notes that section 121 of the Constitution guarantees the Sami linguistic and cultural self-government within the Sami homeland area. The Act on the Sami Parliament regulates the implementation of the self-government. For the tasks relating to their self-government, the Sami elect from among themselves the members of the Sami Parliament. There are about 6,000 voters on the electoral roll; there are about 10,000 Sami in Finland. The Sami Parliament is not an authority but an independent institution, a legal person under public law. It does not safeguard a public interest as such but promotes the general interests of the Sami people.

4.2 On 28 March 2017, the Human Rights Committee declared inadmissible a claim made by Tiina Sanila-Aikio with regard to article 1 of the Covenant.⁵ The same conclusion should be reached in the present case. In paragraph 3.1 of its general comment No. 23 (1994) on the rights of minorities, the Committee states that self-determination is not a right cognizable under the Optional Protocol to the International Covenant on Civil and Political Rights. This interpretation is reflected in the Committee's Views in *Lubicon Lake Band v. Canada*.⁶ According to that criterion, the complaint under article 1 on its own cannot be considered in the present case.

4.3 The communication has been submitted on behalf of 25 authors. Of those, 23 are citizens of Finland and 2 are citizens of Norway. Of the 23 Finnish authors, 22 are listed in the current electoral roll, while the main author requested removal from the roll. Two of the authors are currently members of the Sami Parliament. The current President of the Sami Parliament, Ms. Sanila-Aikio, has submitted, with the authorization of the Board of the Sami Parliament, a communication (No. 2668/2015) with the same substance matter as the present case on behalf of the members of the indigenous Sami people of Finland. The State party submits that, should the Committee consider that Ms. Sanila-Aikio is authorized to represent the indigenous people of Finland, the 23 Finnish authors of the present communication would also be represented in that communication and it would follow that the communication would be inadmissible with regard to those authors as they could not submit the same facts to the same mechanism twice.

4.4 Another communication has been submitted on the same matter by two other members of the Sami Parliament, among other authors, to the Committee on the Elimination of Racial Discrimination. The State party recalls that under rule 86 (g) of the Human Rights Committee's rules of procedure, the communication should therefore be considered inadmissible for being examined under another procedure of international investigation or settlement.

4.5 The authors have not specified any domestic remedy that has been exhausted. It also indicates that the authors were not party as such to the proceedings decided by the Supreme Administrative Court on 26 September 2011, 30 September 2015 and 13 January 2016. In their communication the authors appear to be representing the Sami people collectively; their claim before the Committee constitutes an *actio popularis*. Furthermore, they have not exhausted domestic remedies, as required under article 5 (2) (b) of the Optional Protocol. As the highest domestic appellate court for administrative matters, the decisions of the Supreme Administrative Court cannot be appealed. However, as a mode of extraordinary appeal, the annulment of a decision may be requested from the Court itself.

4.6 The authors' claims before the Committee are indirect and even hypothetical violations of the rights of Sami people in general. They do not allege violations of their individual rights, do not demonstrate having been directly affected by the alleged violations of the Covenant and do not provide documentary evidence in support of their allegations. Hence, the State party considers that the authors have failed to substantiate their claims for the purposes of admissibility.

⁵ *Sanila-Aikio v. Finland* (CCPR/C/119/D/2668/2015), para. 8.6.

⁶ Communication No. 167/1984, para. 13.3.

4.7 The Supreme Administrative Court thoroughly assessed the special status and rights of the Sami people, also taking into account the obligations of Finland under the Covenant. It is not for the Committee to re-evaluate the facts that have led a national court to adopt one decision rather than another, or to question the findings and conclusions of national courts.

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

5.1 On 19 September 2017, the authors submitted their comments on the State party's observations. They state that Ms. Sanila-Aikio cannot act in the name of the Sami Parliament or in the name of the Sami people without their signed consent. The authors further disagree that third parties could limit their individual rights to present a communication before the Committee. The authors clarify that they have no knowledge or access to the content of the other communications submitted to the Human Rights Committee or to the Committee on the Elimination of Racial Discrimination and that none of the authors of the communication currently being considered are part of the other two communications.

5.2 Although two of the authors are Norwegian citizens, they fulfil the requirements to be included in the electoral roll, as they are foreign citizens domiciled in Finland.

5.3 On the matter of the exhaustion of domestic remedies, it is not possible for Sami individuals to enter into a process concerning other persons' applications to be entered on the electoral roll, which is a confidential procedure. Furthermore, the extraordinary appeal against the Supreme Administrative Court's decisions is reserved for the parties involved in the process itself and is not a regular remedy. This appeal has little prospect of success since the Court would have to admit to having made an error, and such admissions are made only in very exceptional cases. The Sami Parliament appealed the 2011 decisions, but the appeal was rejected because there was no procedural error that could have materially affected the decision.

5.4 Regarding the State party's observation that the claim is unsubstantiated, the Sami people, of which the authors are members, have rights that are collective in nature. The survival and continued viability of the Sami people are already endangered; 60 per cent of the Sami population live outside the Sami homeland and only 26 per cent of the Sami people speak Sami as a native language. In such a context, and given the power that the Sami Parliament has to influence the enjoyment of the rights of members of the Sami people to maintain and practice their culture, the negative effects that the inclusion of non-Sami persons on the electoral roll has on the authors' rights under article 27 of the Covenant are more than hypothetical.

State party's observations on merits

6.1 The State party submitted observations on the merits on 28 July and 20 November 2017.

6.2 On 6 October 2015, the Election Committee of the Sami Parliament confirmed the results of the election held between 7 September and 4 October 2015. On 18 November 2015, the Board of the Sami Parliament ordered that the elections take place again using the electoral roll certified on 20 August 2015, arguing that the Supreme Administrative Court decisions of 20 September 2015 had influenced the election results and that the elections that had been held could not be considered to meet the statutory requirement of the principle of cultural autonomy protected by the Act on the Sami Parliament. However, the Board of the Sami Parliament did not have the competence to take up a matter that had already been finally adjudicated by the Supreme Administrative Court. On 13 January 2016, the Court quashed the decision of the Board, and on 23 February 2016 the newly elected members of the Sami Parliament convened their first organizational meeting.

6.3 The Supreme Administrative Court has, in its case law, paid attention to the safeguarding of the rights of the Sami indigenous people and its obligations under the Covenant. On 30 September 2015, the Court allowed 93 persons to be entered into the electoral roll of the Sami Parliament, exerting exceptional diligence and consulting both the Board of the Sami Parliament and the appellants. In reaching the decisions set out in its rulings, the Court invoked, inter alia, articles 1, 2 (1), 25, 26 and 27 of the Covenant, and the United Nations Declaration on the Rights of Indigenous Peoples. The State party

reiterates that, as recently noted in a report of the Prime Minister's Office,⁷ the Supreme Administrative Court decisions of 2011 and 2015 applied the recommendations issued by the Committee on the Elimination of Racial Discrimination in its concluding observations on the ninth, tenth, and seventeenth to nineteenth periodic reports of Finland to better take into account the individual's self-identification within Sami definition.⁸

6.4 On 8 November 2017, the Ministry of Justice appointed a committee to draft a number of amendments to the Act on the Sami Parliament. The committee was to carry out its work in accordance with the Constitution of Finland, international human rights treaties binding on Finland, the United Nations Declaration on the Rights of Indigenous Peoples, the initialled Nordic Sami Convention and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

6.5 The State party is not in a position to assess to what extent the outcome of the Supreme Administrative Court rulings have, as the authors claim, influenced the Sami Parliament's integrity and legitimacy and the right to fair elections.

6.6 As regards the definition of Sami, the Government respects self-identification as a key criterion for the determination of a group of persons or an individual as indigenous, as stipulated, *inter alia*, by article 1 (2) of the Indigenous and Tribal Peoples Convention of the International Labour Organization. The Government also respects the Sami Parliament's right to determine its membership in accordance with Sami customs and traditions. Accordingly, measures have been taken to protect the identity of the Sami people and the rights of its members to enjoy and develop their culture and language in community with the other members of the indigenous community.

6.7 The Committee, in paragraph 2 of its general comment No. 25 (1996) on participation in public affairs and the right to vote, has indicated that the rights under article 25 of the Covenant are related to, but distinct from, the right of peoples to self-determination.

6.8 Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. The State party emphasizes that the right to vote in the elections of the Sami Parliament is established by law. In this regard, the Government has taken measures to ensure that all persons entitled to vote are able to exercise that right.

6.9 The authors have failed to substantiate direct violations of their rights under the Covenant. In general, a complaint must establish how the author has been a personal victim of the violation; it is not sufficient to establish that a law or policy amounts to a violation if the authors have not been affected by it. The authors have not been personally involved in the Supreme Administrative Court rulings and cannot be affected by them.

6.10 Accordingly, the State party asserts that no violations of the Covenant have occurred in the present case.

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

7.1 On 16 April 2018, the authors submitted their comments on the State party's observation on the merits.

7.2 The authors assert that the Court decisions of 26 September 2011 and 30 September 2015 have had a substantial impact on the Sami Parliament and its legitimacy. The Court's interpretation of the definition of Sami has entailed that Sami and ethnic Finns are no longer considered different in their specific culture, ethnicity and livelihoods.

7.3 The Supreme Administrative Court did not apply the Committee's interpretation of article 27 reflected in *Kitok v. Sweden*, where the Committee considered that a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole.⁹ The inclusion of non-Sami individuals in the electoral roll of the Sami Parliament could set a precedent that could, at least theoretically, lead to 512,000 non-Sami

⁷ See Leena Heinämäki and others, *Actualizing Sami Rights: International Comparative Research*, (Prime Minister's Office, 2017).

⁸ A/45/18, para. 91, CERD/C/63/CO/5, para. 11, and CERD/C/FIN/CO/19, para. 13.

⁹ Communication No. 197/1985, para. 9.8.

persons being included in that electoral roll. The Sami Parliament would thus gradually represent the interests of non-Sami persons and would no longer ensure the preservation of Sami linguistic and cultural heritage, amounting to a gradual forced assimilation of the Sami people in Finland. There are already applications for inclusion in the Sami electoral roll for the next elections, which will take place in 2019. Many anti-Sami organizations are offering to assist ethnic Finns with applying and eventually appealing to the Supreme Administrative Court. There could be an economic interest in including a high number of non-Sami individuals on the electoral roll to ensure the Sami Parliament's acceptance of large-scale projects in the areas of mining, mass tourism and infrastructure.

7.4 There is already an internal dispute in the Sami Parliament, since most of its members do not recognize one of the members as a Sami person. The person was included in the electoral roll by the Supreme Administrative Court in 2011, and was elected in 2015. This has blurred the role of the Sami Parliament and affected its public image and legitimacy.

7.5 The authors disagree with the State party's statement that the Supreme Administrative Court took into account the international obligations of Finland, especially those under the Covenant. Although the Court based its findings on the recommendations of the Committee on the Elimination of Racial Discrimination contained in the concluding observations on the tenth and seventeenth to nineteenth reports of the State, it ignored those contained in the concluding observations on the twentieth to twenty-second periodic reports, in which the Committee criticized the Court's interpretation of section 3 of the Act on the Sami Parliament.

7.6 The authors submit that the Court accepted evidence that relied entirely on the State party's public administration records, such as those of church registry offices and the provincial archives of the State, and that those documents are unreliable.

7.7 Furthermore, the Supreme Administrative Court can overrule decisions by the Sami Parliament regarding the inclusion of non-Sami persons in the electoral roll. This amounts to a violation of article 1 of the Covenant, since it constitutes interference with the right of the Sami people, as represented by the Sami Parliament, to self-determine its membership.

7.8 Since the electoral roll has been compromised, the authors have proposed that a new definition of Sami be adopted and that the electoral roll be rebuilt on the basis of the new definition. However, it is not likely that the process can be finalized before the next elections. The authors note that since 1996 there have been nine different committees established to study the rights of the Sami people, with very little result. They also consider that, by proposing changes to the Act on the Sami Parliament, the State party is implicitly admitting that the interpretation by the Supreme Administrative Court of section 3 of the Act violated the Covenant.

7.9 Minorities today face a new set of challenges that endanger their rights protected by the Covenant, and these challenges are different from those faced in the 1960s, when the Covenant was being drafted. Nevertheless, the Covenant today still has a role in protecting the cultural diversity and heritage of minorities from structural assimilation.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee notes the State party's argument that two members of the Sami Parliament have submitted another communication on the same matter to the Committee on the Elimination of Racial Discrimination. The Committee recalls that, for the purposes of article 5 (2) (a), "the same matter" concerns the same authors, the same facts and the same substantive rights. The Committee notes that the communication presented before the Committee on the Elimination of Racial Discrimination was not submitted by the same authors. Therefore, the Committee concludes that, pursuant to article 5 (2) (a) of the Optional Protocol, the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's contention that the current President of the Sami Parliament, Ms. Sanila-Aikio, has submitted another communication on the same matter before this Committee on her own behalf. The Committee recalls that on 28 March 2017 it found that communication admissible in so far as the author brought it on her own behalf. That communication, accordingly, was not submitted by the same authors.

8.4 The Committee notes the State party's claim that the authors of the communication have not exhausted domestic remedies as required under article 5 (2) (b) of the Optional Protocol. The Committee notes that the decisions accepting persons as entitled to vote, contrary to the decision of the Election Committee, were rendered by the Supreme Administrative Court, which is the highest domestic appellate court for administrative matters. It also notes the State party's submission that annulment of the Court's decision may be requested from the Court itself as an extraordinary appeal. The Committee further notes the authors' submission that it is not possible for Sami individuals to enter into a process concerning other persons' applications to be included in the electoral roll, which is a confidential procedure, and that the extraordinary appeal to the Supreme Administrative Court's decisions is reserved to the parties in that process. The Committee further notes the authors' submission that the Sami Parliament appealed the 2011 decisions of the Supreme Administrative Court, but the appeal was rejected. The State party has not contested these submissions. The Committee considers that the State party has not demonstrated that an effective remedy was reasonably available to the authors. Accordingly, the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication.

8.5 The Committee notes the State party's contention that the authors' claims equate to an *actio popularis*: that their claims involve indirect or even hypothetical violations of the rights of the Sami indigenous people in general. The Committee recalls that, in accordance with article 2 of the Optional Protocol, only individuals who claim that any of their rights under the Covenant have been violated can submit communications. The Committee further notes that by submitting the communication on their own behalf, the authors bring the communication to the Committee as members of the Sami indigenous people and as voters for the Sami Parliament. The Committee notes that 22 of the authors are included in the electoral roll, and that 2 of those authors are members of the Sami Parliament. The Committee further notes that 3 of the authors are not included in the electoral roll, including the 2 Norwegian authors. In the absence of any allegation that those 3 authors were excluded from the electoral roll against their will or other information to substantiate their claims, the Committee cannot conclude that those 3 authors are affected by the Supreme Administrative Court decisions regarding membership to an electoral roll in which they are not included and have not sought to be included. Regarding the remaining 22 authors included in the electoral roll, the Committee considers that in their individual capacities, they may be affected by issues concerning the functioning of the Sami Parliament and the elections thereto. Accordingly, the Committee considers that the 22 authors who are part of the electoral roll are not prevented from submitting a communication to the Committee under article 1 of the Optional Protocol, to the extent that they claim violations of their rights.

8.6 Regarding the authors' claim under article 1 of the Covenant, the Committee recalls its jurisprudence that an author, as an individual, cannot claim under the Optional Protocol to be a victim of a violation of the right of self-determination enshrined in article 1 of the Covenant, which deals with rights conferred to peoples, as such.¹⁰ The Committee also recalls that the Optional Protocol provides for a procedure under which individuals can claim that their individual rights have been violated, but that these rights do not include those set out in article 1 of the Covenant.¹¹ Accordingly, the Committee considers that the authors' claim regarding violations of article 1 of the Covenant is inadmissible under article 1 of the Optional Protocol. Although the Committee does not have the competence under the Optional Protocol to consider a communication alleging a violation of the right of self-determination protected under article 1 of the Covenant, it may interpret article 1, when this

¹⁰ *Lubicon Lake Band v. Canada*, para. 13.3.

¹¹ General comment No. 23, para. 3.1; *Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 6.3.

is relevant, in determining whether rights protected in parts II and III of the Covenant have been violated.¹²

8.7 The Committee notes the State party's contention that the authors do not allege violations of their individual rights, have not demonstrated that they are directly affected by the alleged violations of the Covenant, have not provided documentary evidence in support of their allegations and have failed to substantiate their claims. The 22 authors claim in turn that in determining whether an individual is a member of the Sami indigenous people, the Court departed from the consensual interpretation of the law, that this affected the right of every member of the Sami people to equality before the law under article 26 of the Covenant, and that the Court rulings impeded the enjoyment of their rights under article 27 of the Covenant to use their language and enjoy their culture in community with other members of the group. The Committee further notes the authors' claim that the rulings in which the Supreme Administrative Court, against the decision of the Election Committee, accepted the applications of individuals to vote in the elections of the Sami Parliament, corrupted the representative value of the Sami Parliament and affected their rights to effective participation in public affairs. The Committee understands these claims as invoking rights under article 25 of the Covenant.

8.8 The Committee recalls its jurisprudence that any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his or her right or that such impairment is imminent, basing his or her arguments for example on legislation in force or on a judicial or administrative decision or practice.¹³ The Committee notes that the 22 authors are members of the Sami indigenous people, and as such have the right to internal self-determination and to enjoy their own culture and language, including in community with other members of their group. It is also undisputed that the Sami Parliament is the institution established by the State party to guarantee the Sami linguistic and cultural self-government within the Sami homeland and that it may make initiatives and proposals to the State authorities, as well as issue statements. As persons included in the electoral roll of the Sami Parliament and, in the case of two authors, as members of that Parliament, the authors have sought to exercise the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected in genuine periodic elections for the Sami Parliament.

8.9 The Committee notes that elections for the Sami Parliament take place every four years, that under section 21 of the Act on the Sami Parliament, every Sami has the right to vote from 18 years of age, and that there are currently approximately 6,000 voters on the electoral roll of the Sami Parliament. It also notes the authors' contention that the decisions of the Supreme Administrative Court since 2011 have altered the formal rules for determining inclusion on the electoral roll, thus impeding the right to internal self-determination of the Sami indigenous people, and that the decisions could, at least theoretically, lead to the inclusion of 512,000 non-Sami persons on the electoral roll of the Sami Parliament. The Committee further notes the authors' submission, which is not contradicted by the State party, that there are already applications to the Sami electoral roll for the 2019 elections, with many anti-Sami organizations offering to assist ethnic Finns with applying and eventually appealing to the Supreme Administrative Court, and that there could be an economic interest in including a high number of non-Sami individuals on the electoral roll to ensure the Sami Parliament's acceptance of large-scale projects in the areas of mining, mass tourism and infrastructure. The Committee considers that, in their individual capacities, the 22 authors may be affected by issues concerning the electoral roll for the elections to the Sami Parliament, which may have imminent repercussions for that Parliament's capacity to represent the Sami indigenous people and to protect the authors' rights to participate in the conduct of public affairs as members of that indigenous community. Accordingly, the Committee considers that the 22 authors, as members of the Sami indigenous people and as persons included on the electoral roll, may be affected, as individuals, by the Court rulings regarding the electoral roll of the Sami Parliament.

¹² *Guillot et al. v. France* (CCPR/C/75/D/932/2000), para. 13.4; *Mahuika et al v. New Zealand*, para. 9.2.

¹³ *Rabbae et al. v. Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5, citing *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), para. 6.4, and *A.W.P. v. Denmark* (CCPR/C/109/D/1879/2009), para. 6.4.

8.10 Accordingly, the Committee considers that, for the purpose of admissibility, the claims of the 22 authors are adequately substantiated and that it is not precluded, under article 1 of the Optional Protocol, from examining the present communication with respect to the claims regarding articles 25, 26 and 27 of the Covenant.

8.11 In view of the foregoing, the Committee considers that the 22 above-mentioned authors' claims under articles 25, 26 and 27 of the Covenant are admissible, and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the authors' allegations that the Supreme Administrative Court departed from statutory law and the consensual definition of Sami membership for purposes of establishing the electoral roll, in violation of articles 25 and 27 of the Covenant. The authors further argue that the Court decisions corrupted the representative value of the Sami Parliament, affecting their rights to effective participation in public affairs and to exercise their right to internal self-determination and negatively affecting the authors' and the Sami people's use of their language and enjoyment of their culture in community with other members of the group. According to the authors, these decisions have increased division within the Parliament, which has become less effective in promoting and protecting the rights of the Sami people, and risk further diluting the membership of the Sami indigenous people in the electoral roll of the Parliament, including for the forthcoming election. The authors claim that the criteria applied by the Court had no reasonable and objective justification, in violation of their rights under the Covenant.

9.3 With respect to article 25, the Committee notes the State party's argument that the Supreme Administrative Court's review is established by law and that the State party has taken all measures to ensure that all persons entitled to vote are able to exercise that right in full compliance with article 25 of the Covenant. The State party contends that it fully respects self-identification as a criterion for the determination of a group of people or an individual as indigenous, in compliance with the recommendations of the Committee on the Elimination of Racial Discrimination. The Committee also notes the authors' assertion that the State party fails to acknowledge the concern of the Committee on the Elimination of Racial Discrimination that the definition adopted by the Court as to who is a Sami person entitled to vote for Members of the Sami Parliament gives insufficient weight to the Sami people's rights to determine their own identity or membership in accordance with their customs and traditions and their right not to be subjected to forced assimilation or destruction of their culture, as recognized under articles 33 and 8 of the United Nations Declaration on the Rights of Indigenous Peoples.¹⁴

9.4 The Committee notes that a process is currently ongoing to amend the Act on the Sami Parliament, including the criteria to determine the right to vote. The Committee also notes the authors' contention that this process is not likely to be finalized by the next elections and that there have been many attempts to study the matter, with very little result.

9.5 The Committee recalls that, in accordance with paragraph 4 of its general comment No. 25, any conditions which apply to the exercise of the rights to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections should be based on objective and reasonable criteria. The Committee also recalls its jurisprudence in *Lovelace v. Canada*, that the category of persons belonging to an indigenous people may in some instances need to be defined to protect the viability and welfare of a minority as a whole.¹⁵ In *Kitok v. Sweden*, the Committee considered that a restriction upon the right of an individual member of a minority must be shown to have a reasonable and objective justification and to be necessary for the continued viability and welfare of the minority as a whole.¹⁶

9.6 The Committee recalls that under article 33 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to determine their own

¹⁴ CERD/C/FIN/CO/20-22, para. 12.

¹⁵ Communication No. 24/1977, para. 15.

¹⁶ Communication No. 197/1985, para. 9.8.

identity or membership in accordance with their customs and traditions, and the right to determine the structures and to select the membership of their institutions in accordance with their own procedures. Article 9 of the Declaration provides that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and that no discrimination of any kind may arise from the exercise of such a right. In accordance with article 8 (1) of the Declaration, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

9.7 In this context, the Committee notes that pursuant to section 3 of the Act on the Sami Parliament, for a person to be considered as a Sami for the purposes of being allowed to vote in the elections for the Parliament, in addition to considering himself or herself a Sami: (a) he or she or at least one of his or her parents or grandparents must have learned Sami as his or her first language; (b) he or she must be a descendant of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (c) at least one of his or her parents must have been registered as an elector for an election to the Sami Delegation or the Sami Parliament. The Committee also notes that, as undisputed by the parties, in a majority of cases the Supreme Administrative Court stated explicitly that the person did not meet any of the objective criteria spelled out in section 3 of the Act.

9.8 The Committee recalls its general comment No. 23, in particular paragraph 7 thereof, in which the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. The Committee further observes that article 27 of the Covenant, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples and article 1 of the Covenant, enshrines an inalienable right of indigenous peoples to freely determine their political status and freely pursue their economic, social and cultural development.¹⁷ Article 1 of the Covenant and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.¹⁸

9.9 The Committee notes that, according to the State party, the authors failed to establish in what way they had been directly affected by the Supreme Administrative Court rulings. It also notes the authors' request that the Committee take into account the individual and collective dimensions of their rights. In this regard, the Committee recalls its general comment No. 23, in which it recognizes that the protection of the rights under article 27 of the Covenant is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observed that those rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant.¹⁹ Moreover, although the rights protected under article 27 are individual rights, they depend in turn on the ability of the group to maintain its culture, language or religion.²⁰ The Committee further recalls that the preamble of the United Nations Declaration on the Rights of Indigenous Peoples establishes that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples. In view thereof, the Committee considers that in the context of indigenous peoples' rights, articles 25 and 27 of the Covenant have a collective dimension and some of those rights can only be enjoyed in community with others. The rights to political participation of an indigenous community in the context of internal self-determination under article 27, read in the light of article 1, of the Covenant, and in pursuance of the preservation of the rights of members of the community to enjoy their own culture or to use their own language in community with the other members of their group, are not enjoyed merely individually. Consequently, when considering the individual harm

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples, art. 3; see also art. 4 of the Declaration. See further general comment No. 12, para. 2.

¹⁸ General comment No. 12, para. 2.

¹⁹ General comment No. 23, para. 9.

²⁰ *Ibid.*, para. 6.2.

in the context of this communication, the Committee must take into account the collective dimension of such harm. With respect to dilution of the vote of an indigenous community in the context of internal self-determination, harm directly imposed upon the collective may injure each and every individual member of the community. The authors are members of an indigenous community and all of their claims are related to their rights as such.

9.10 The Committee notes the authors' claims that, given the mandate of the Sami Parliament, the effective functioning of the Parliament and its capacity to adequately represent the views of the Sami are essential for the implementation by the State party of articles 25 and 27 of the Covenant, and that the Sami Parliament is an important instrument for the Sami, individually and collectively, to enjoy and exercise the rights protected under those articles. The Committee notes that the powers and duties of the Sami Parliament include looking after the Sami language and culture, taking care of matters relating to the status of the Sami as an indigenous people, acting as a representative of the Sami people nationally and internationally in matters pertaining to its tasks, and being consulted by all authorities in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. The Committee accordingly considers that the Sami Parliament constitutes the institution by which the State party ensures the effective participation of the members of the Sami people as an indigenous community in the decisions that affect them. Consequently, the State party's fulfilment of the obligations contained in article 27 of the Covenant depends on the effective role that the Sami Parliament may play in decisions that affect the rights of members of the Sami community to enjoy their own culture or to use their own language in community with the other members of their group. The electoral process for the Sami Parliament accordingly must ensure the effective participation of those concerned in the internal self-determination process, which is necessary for the continued viability and welfare of the indigenous community as a whole. Pursuant to article 25, the Committee also considers that statutory restrictions affecting the right of members of the Sami indigenous community to effective representation in the Sami Parliament must have a reasonable and objective justification and be consistent with the other provisions of the Covenant, including the principle of internal self-determination relating to indigenous peoples.

9.11 In the current case, the 22 authors are members of the Sami people and participate in the electoral process. The Committee observes the authors' uncontested submissions that the decisions of the Supreme Administrative Court, from 2011 onwards, departed from the consensual interpretation of section 3 of the Act on the Sami Parliament for determining membership in the electoral rolls of that Parliament. In particular, in the majority of cases the Court ignored the requirement of satisfaction of at least one of the objective criteria, instead resorting to an "overall consideration" of a person's own "strong" opinion in considering himself or herself a Sami. The Court thereby infringed on the capacity of the Sami people, through their Parliament, to exercise a key dimension of Sami self-determination in determining who is a Sami. The Committee further notes the authors' contentions regarding the risk of greater dilution of Sami representation through the electoral rolls in the near term (see para. 7.3 above). The Committee considers that the Court rulings affected the right of the 22 above-mentioned authors, and of the Sami community to which they belong, to engage in the electoral process regarding the institution intended by the State party to secure the effective internal self-determination, and the right to their own language and culture, of members of the Sami indigenous people. The Committee further considers that by departing in this manner from the consensual interpretation of the law determining membership in the electoral roll of the Sami Parliament, the Court's interpretation was not based on reasonable and objective criteria. Accordingly, the Committee considers that the facts before it amount to a violation of the authors' rights under article 25, read alone and in conjunction with article 27, as interpreted in the light of article 1 of the Covenant.

9.12 Having found violations of article 25, read alone and in conjunction with article 27, the Committee does not consider it necessary to examine the authors' other claims under the Covenant.

10. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of article 25, read alone and in conjunction with article 27 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to review section 3 of the Act on the Sami Parliament with a view to ensuring that the criteria for eligibility to vote in Sami Parliament elections are defined and applied in a manner that respects the right of the Sami people to exercise their internal self-determination in accordance with articles 25 and 27 of the Covenant. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

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

Annex

[Original: French]

Individual opinion (concurring) of Olivier de Frouville

1. I agree with the Committee's conclusion in this case, namely that there has been a violation of article 25, read alone and in conjunction with article 27, as interpreted in the light of article 1 of the International Covenant on Civil and Political Rights.

2. The admissibility decision in this case provides important clarification with respect to the one adopted previously by the Committee in case No. 2668/2015 (*Sanila-Aikio v. Finland*). In its decision of 28 March 2017, the Committee noted that, by submitting the communication on her own behalf, the author brought the communication to the Committee as a member of the Sami indigenous people and as a member of the Sami Parliament, of which she was the elected President. The Committee considered that, in this individual capacity, she could be affected by issues concerning the functioning of the Parliament and the elections thereto.¹ Similarly, later in the decision, the Committee noted that decisions taken by institutions of the Finnish State that had an impact on the composition of the Sami Parliament and the equal representation of the Sami could impact the right of individual members of the Sami community to enjoy their culture and to use their language in community with the other members, and their right to equality before the law.² The admissibility decision was therefore based on the finding of a double causal link: between the judgments of the Supreme Administrative Court and the composition and functioning of the Sami Parliament; and between the composition and functioning of the Sami Parliament and the rights of members of the Sami people under article 27 of the Covenant. However, the arguments advanced by the author did not clearly support this double causal link and the Committee's decision was equally evasive. There was no proof offered as to how the application of the principle of self-identification significantly affected the composition of the electorate, much less the composition and functioning of the Sami Parliament. Furthermore, no concrete examples were given to demonstrate that, in any particular case, changes in the composition of the electorate had had an impact on the rights of members of the Sami people under article 27. The Committee therefore did not explain clearly how the author could claim to be a "victim" of violations of her rights under articles 25, 26 or 27 of the Covenant. The present admissibility decision remedies a posteriori this lack of reasoning.

3. First, it focuses quite rightly on the claims made under article 25 of the Covenant. The case concerns, first and foremost, the right of the Sami to take part in the conduct of public affairs, as members of an indigenous people, a status which, in addition, fully justifies the reading of article 25 in conjunction with not only article 27 but also article 1 of the Covenant. What is at stake here is the right of the Sami to determine their own identity or membership in accordance with their customs and traditions, as well as their right to determine the structures and to select the membership of their institutions in accordance with their own procedures, both of which are enshrined in article 33 of the United Nations Declaration on the Rights of Indigenous Peoples. The decisions of the Supreme Administrative Court have indeed had a significant impact on the ability of the Sami people to collectively determine their own membership and, subsequently, on their right to take part in the conduct of public affairs through representatives elected to a constituted body. This is compounded by the fact that, in those decisions, the Court did not correctly apply the relevant national law, which clearly sets forth an objective membership criterion that has been approved by the Sami themselves. By failing to apply this criterion and replacing it with one of self-identification that it decided to interpret on a case-by-case basis, the Court restricted the ability of the Sami to exercise their right to take part in the conduct of public affairs through the institutions whose purpose is to safeguard their rights as members of an indigenous people, pursuant to article 27 of the Covenant.

¹ CCPR/C/119/D/2668/2015, para. 8.5.

² *Ibid.*, para. 8.8.

4. The present admissibility decision also clarifies the causal link between the decisions of the Supreme Administrative Court and the political rights of the Sami. In paragraph 8.9, the Committee notes the authors' contention that the application of the principle of self-identification could, at least theoretically, lead to the inclusion of 512,000 non-Sami persons on the electoral roll of the Sami Parliament. The Committee also notes the worrying allegation, which is not contested by the State party, that anti-Sami organizations are campaigning and assisting non-Sami persons with applying to be recognized as Sami and included on the electoral roll, because of underlying economic interests. In my view, these circumstances justify the Committee's recognition of 22 authors as – at least potential – victims.
