

**TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION**

Individual communication submitted under the Optional Protocol to the International Convention on the Elimination of All Forms of Racial Discrimination. The application includes an URGENT request for interim measures of protection.

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All 17 authors are reindeer herding members of Girjas Sami village. They all belong to the indigenous Sami people. (The authors and Girjas Sami village are hereinafter jointly referred to as "Girjas".)

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**Articles violated:**

International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the "Convention") Article 5 (d) (v) (the right to property), as well as Articles 5 (a) and 6, the latter two in combination (the right to an effective remedy and equal treatment before tribunals)

**1. APPLICATION AND SUMMARY OF COMPLAINT**

1.1 On behalf of the Girjas, I respectfully request the United Nations Committee on the Elimination of Racial Discrimination (hereinafter referred to as the "Committee") to consider the following individual communication and **urgent request for interim measures**.

1.2 Sweden, a State party to the Convention, allows a private entity, Kiruna Iron AB, to pursue mining activities within a land area where Girjas pursues reindeer herding, a traditional livelihood of the indigenous Sami people, and has done so since time immemorial. Through traditional use, Girjas has established property rights to the land area in question. Girjas has not consented to Kiruna Iron entering its territory. The mining activities destroy pasture areas within Girjas' traditional territory, which are indispensable to the community. The activities further block Girjas' migration route between the winter and summer pasture areas. Without the pasture areas Kiruna Iron's open pit mining consumes, and without the migration route, Girjas can no longer pursue traditional Sami reindeer herding. Girjas' members (i.e. the authors) are being forcefully relocated from their traditional territory and livelihood. Sweden's failure to prevent the mining activities amounts to a violation of the right to property, as enshrined in Article 5 (d) (v) of the Convention.

1.3 In addition, Girjas' members (i.e. the authors') right to pursue traditional Sami reindeer herding is as such protected under the right to property. Consequently, as Kiruna Iron's mining activities result in the authors no longer being able to pursue reindeer herding, Sweden's failure to prevent the mining activities amounts to a violation of Article 5 (d) (v) of the Convention, also with regard to Girjas' members' right to pursue reindeer herding.

1.4 The decision to limit Girjas' property rights is taken by an administrative authority. It can only be appealed to the Swedish government. Girjas is hence denied the right to have its

right to property tried before a court of law. This amounts to a violation of the right to an effective remedy and to equal treatment before tribunals pursuant to Articles 5 (a) and 6 of the Convention.

## **2. ON THE SAMI PEOPLE AND SAMI REINDEER HERDING IN GENERAL**

2.1 The Sami people has inhabited its traditional territory - covering what today constitutes northern Finland, Norway, Sweden and the Kola Peninsula in the Russian Federation - for centuries, and since well before the present day states drew their borders across *Sápmi* - the land of the Sami. The Sami have their own culture, livelihoods and language, distinct from the cultures of the non-Sami populations. The Sami people is hence indigenous to its traditional territories, including to the parts covered by this communication. Sweden also recognizes the Sami as an indigenous people.

2.2 The Sami have pursued reindeer herding since time immemorial. Reindeer herding constitutes the backbone of the Sami culture in Sweden. Here *Sápmi* is essentially equivalent with the traditional reindeer herding territory. Without reindeer herding, the Sami culture and society cannot survive. On the individual level, reindeer herding constitutes the most central element of a Sami reindeer herder's cultural identity.

2.3 According to the traditional Sami societal structure, reindeer herding is pursued in family groups consisting of a couple of families, known as *siidas*. Following colonization, Sweden administratively divided the Sami reindeer herders into so called Sami villages (*sámebyar*). Normally, a Sami village envelopes several of the previous *siidas*. Under the Swedish Reindeer Herding Act, a Sami village is both a geographical territory and an economic association, i.e. a legal entity, with the individual reindeer herders as members.

2.4 Reindeer herding is a semi-nomadic livelihood where herders migrate with their reindeer over a yearly cycle. The migration patterns vary between different regions within the Sami traditional territory. In the region where Girjas is situated, the reindeer and the reindeer herders migrate from summer pasture areas, situated close to the Atlantic Ocean in northern Norway, in an easterly direction to winter pasture areas located in forested terrains in northeastern Sweden, not far from the Baltic Sea. During the spring, the migration pattern is reversed and the herders and their reindeer travel back to their summer pasture areas in a westerly direction. In between the summer and winter areas there are autumn and spring pasture lands. The reindeer essentially determine the migration routes, but the herders aim to find best possible pasture for their reindeer every season. Although the yearly cycle follows a similar pattern, what areas are used for pasture each season may vary from year to year, depending on weather and grazing conditions. This is particularly true for the pre-winter, winter, and early spring pasture areas, when reindeer herding is particularly

sensitive to weather, snow-depth, ice condiation and other factors impacting on grazing conditions. During spring, summer and autumn, Sami villages commonly keep all their reindeer together in one big herd. During winter, when pasture is scarce, Sami villages normally split the herd up into several winter groups, which often, but not always, have their roots in the traditional *siida* system.

### 3. GENERALLY ON GIRJAS AND ITS TRADITIONAL TERRITORY

3.1 The 18 authors pursue traditional Sami reindeer herding, migrating with their reindeer in essentially the same paths their forefathers have used for centuries. According to Swedish administrative regulation, at any given time, Girjas' members may together hold a maximum of 12,000 reindeer.

3.2 A map outlining Girjas' traditional reindeer herding territory, divided up into spring, summer, autumn and winter pasture areas, and also outlining Girjas' migration route, is attached as **Appendix 1**. (Please note that the spring and autumn lands overlap to some extent.) As the map displays, Girjas' traditional territory can, in general terms, be described as follows.

3.3 Girjas' summer pasture area (marked with light yellow on Appendix 1), consists of relatively high-altitude mountains stretching from northern Siidasjavri in northern Norway, close to the Atlantic Ocean, to the west, to [*lägg in*] in the east. To the north, Girjas has a natural border onto Laevas Sami village through the Kalix River system and steep mountain slopes. The southern border too, towards Bäste Sami village, is mostly natural, drawn by the Kaitum River system and swamp areas. The autumn pasture area (marked with red on Appendix 1), consists of low-altitude mountains and stretches from the [*lägg in*] in the west to the main railroad in central northern Sweden (*stambanan*) in the east. The spring pasture area (marked with red, orange and green on Appendix 1), to a significant extent overlaps with the autumn land, hence too consisting of a low-altitude mountain area stretching from the just mentioned border to the summer pasture areas in the west, to the railroad in the east. The railroad poses a great challenge to Girjas when moving the herd in both directions. It is critical for Girjas to get the herd over and away from the railroad to minimize the number of reindeer killed by trains. Girjas' regular winter pasture area (marked with blue on Appendix 1), consists of low altitude forested lands and stretches from the railroad in the west to the village Satter in the east, where Girjas borders onto Ängeså and Tärendö Sami villages. Due to extensive logging in Girjas' regular winter pasture areas, Girjas has more recently been forced to use more high altitude areas towards the west also for winter pasture. The borders between the different pasture areas are more complex than may appear from the above description. In reality, there are no absolute borders between different pasture areas.

Weather, snow conditions etc. heavily impact on what areas are used for pasture during the various seasons each year.

3.4 No year is like the other in reindeer herding. Weather and grazing conditions determines when Girjas moves the reindeer from one pasture area to another, and at what pace. But generally speaking, Girjas utilizes the spring pasture area from March to June. In early July, the reindeer migrate to the summer land. At the end of August, the herd moves to the autumn land, where it remains to mid-December when the reindeer herders migrate further east with their reindeer to the winter-pasture area. In early March, the cycle starts all over again. Girjas keeps the entire herd of 12,000 animals together during spring, summer and autumn. During winter, it splits the herd up into 5-6 smaller winter groups.

#### **4. THE PRESENT ISSUE**

##### *About Kiruna Iron's mining project*

4.1 Kiruna Iron's three open pit mines are situated at three different, albeit adjacent, locations, in the Coavrrek (Tjaurek) area, in the heart of Girjas' traditional reindeer herding territory. A map outlining Kiruna Iron's industrial sites is attached as **Appendix 2** (the map has been attained from Kiruna Iron's mother company, Hannan Rewards, website). Appendix 2 marks Open Pit Mine A, Open Pit Mine B, and Open Pit Mine C. Each mine has an associated industrial area, hosting e.g. water-dams filtering rest-products from the mining activities, rest product magazines, workshops, loading-places for the ore, offices, facilities for the employees etc. In total, the industrial areas amounts to, respectively, X km x X km (Open Pit Mine A), X km x X km (Open Pit Mine B), and X km x X km (Open Pit Mine C). In addition, noise emanating from the industrial activities causes the reindeer to shy away, resulting in a "buffer-zone" of 10 kilometers in all directions from the outer border of each industrial area. The areas within the buffer-zone too, are essentially rendered useless as pasture land. Further, dust from the mining activities causes significant damage to all pastures within a 15 km radius from each of the mining sites. In addition to consuming pasture areas, the industrial area is situated right on Girjas' migration route between the summer and winter pasture areas, thus completely blocking the migration route. (A map outlining Girjas' spring pasture area is attached as **Appendix 3**. On Appendix 3, the industrial area is marked with red, the noise buffer-zone with blue, and the dust-fall area with green. A map outlining Girjas' autumn pasture area is attached as **Appendix 4**, marking the industrial area, the noise buffer-zone and the dust-fall area with the same colors as Appendix 3.)

4.2 In regards to the noise buffer-zone, it is well documented in scientific research that industrial activities in reindeer herding areas result in reindeer shying away not only from

the industrial site as such, but also from areas adjacent to the site. Although individual reindeer may at times be sited close to an industrial site, these are often young reindeer bulls and are not representative of the behavior of the herd at large. It is well researched and documented that the majority of the herd largely avoids grazing areas adjacent to an industrial site. Young reindeer bulls are, generally speaking, less disturbed by industrial sites, while reindeer cows with calves are particularly shy of such areas. Research has established that the noise buffer-zone may vary from 2 to 10 km, depending on the industrial activity. Mining constitutes the greatest sort of infringement in reindeer herding land, and generates substantive noise. The buffer-zone with regard to mining is thus around 10 km, in all directions. As far as roads are concerned, studies show that reindeer tend to shy away 4 km from such infrastructure. This research has been accepted by the reindeer herding community, as it corresponds well with empirical observations made by reindeer herders themselves before the buffer-zone theory was “scientifically proven”.

4.3 In regards to the dust-fall, it is well documented that the type of open pit mining Kiruna Iron pursues results in dust spreading about 15 km from the mining sites in all directions. Such spread of mining dust damages lichen pasture, causing a change in vegetation where grass overtakes lichen. This is harmful to reindeer herding, since, as the below elaborates, lichen is a crucial part of the reindeer’s nutrition.

4.4 On top of the actual mining, the mining activities require the construction of infrastructure, mainly roads, to and in between the industrial sites. From a newly built bridge, one road runs to Open Pit Mining Site A. From there two other roads stretches to Open Pit Mining Sites B and C, respectively. (The road system associated with the mining sites is marked on the maps attached as Appendixes 3 and 4.). In total, [X] km of new roads have been constructed as a result of the establishment of the three open pit mines. As mentioned, reindeer typically shy away 4 km from roads.

4.5 In sum, as the below elaborates, Kiruna Iron’s open pit mining system is situated at the heart of Girjas’ traditional reindeer pasture land. The mining activities, including associated infrastructure, have such detrimental effects on Girjas’ traditional pasture land and fragment its traditional territory in a manner rendering it impossible for Girjas and its members (i.e. the authors) to continuously pursue traditional Sami reindeer herding.

*Further on the impact by Kiruna Iron’s open pit mining system on Girjas’ and its members’ possibility to continuously pursue traditional Sami reindeer herding*

4.6 In spring, Girjas’ winter groups migrate west with their reindeer to the spring pasture area where the smaller winter herds are once again merged to form one big herd. As mentioned, when approaching the spring pasture areas, it is critical to get the reindeer over

and away from the main railroad in central Sweden (*stambanan*) (marked on the map attached as Appendix 3). Having passed the railroad, Girjas lets the herd go and the reindeer migrate unassisted up into the spring pasture area, stretching from the railroad and roughly [*add number*] km west where there is a sharp shift in the terrain from low altitude to high altitude mountain areas. (Girjas' spring pasture land is marked on the map attached as Appendix 3.) The Coavrrek (Tjaurek) area, where Girjas has its spring land, is, due to topographical reasons, the first area above the winter pasture land within Girjas' traditional territory where snow melts each year, and pasture becomes easily accessible to the reindeer. Another factor making the Coavrrek (Tjuarek) area suitable for spring pasture is its richness in lichen, combined with good grass, leaves, and bush pasture. Due to its anatomy, the reindeer need smooth transition from lichen dominated grazing in the winter to summer pasture which mainly consists of grass. The importance of access to pasture in the spring cannot be overstated. After the long Arctic winter, when pasture is scarce, the reindeer is in desperate need of snow-free pasture in order to feed. As the spring proceeds, it is critical to the well-being of the reindeer that it can gradually move up in the mountains as the snow-line recedes, gaining access to easily digested spring flora. Appendix 3 shows how Girjas' spring pasture area roughly amounts to [*number*] × [*number*] km, i.e. [*number*] square km. Appendix 3 further illustrates how Kiruna Iron's open pit mining system, with the three industrial sites, associated infrastructure and the noise buffer-zone, consumes about 60-70 %, or around [*number*] square km, of the spring pasture area. In addition, dust-fall negatively impacts on most of the remaining small patches of spring pasture. In sum, Kiruna Iron's mining project leaves Girjas with only small patches of spring pasture, which cannot sustain a reindeer herd. Without spring pasture, it is not possible to pursue Sami reindeer herding. Girjas and its members (i.e. the authors) are driven off their traditional land, forced out of their traditional livelihood.

4.7 Spring is the season when the reindeer calve. As the map attached as Appendix 3 demonstrates, although the Coavrrek (Tjaurek) area is situated somewhat east of Girjas' main calving land, reindeer cows falling behind the main herd calve here. As mentioned, reindeer cows are extremely sensitive to noise and other disturbances during the calving period. Girjas does its utmost to protect the reindeer cows from disturbances during this period, guarding them every hour, as even the smallest interference can cause miscarriages.

4.8 In summer, Girjas' herd migrate further west up in the high-altitude mountain areas, where the reindeer remain all summer. This is the only pasture-season Kiruna Iron's open pit mining does not impact on, at least directly.

4.9 Kiruna Iron's open pit mining system further destroys the only area suitable for autumn pasture available to Girjas, and which is hence indispensable to the community. As the winter approaches, the reindeer naturally and freely (i.e. without assistance by or

interference from) the reindeer herders roam east from the high-altitude mountain areas to more low-altitude land. As the map attached as Appendix 4 shows, the low-altitude mountains suitable for autumn pasture within Girjas' traditional territory starts at [*beskriv med namn*] and stretches [*number*] km further west to the main railroad in inland Sweden (*stambanan*) where Girjas has raised a border-fence to halt the reindeer's natural migration. (As mentioned, and as is clear from Appendixes 3 and 4, the autumn and spring pasture areas overlap to a significant degree.) Here, the reindeer feed until early winter, when Girjas round up the herd and divide it into the 5-6 smaller winter groups. Then, the migration down to the winter pasture area ensues. Appendix 4 further shows how the lion share of the autumn pasture is destroyed by Kiruna Iron's open pit mining system. The mining activities completely wipe out the area west of the border-fence where the reindeer normally round up in the autumn when the border-fence has halted the reindeer's migration. The same is true for the heart of the autumn land, and substantial parts of the western areas. What remains are only around [*number*] %, or about [*number*], square km, towards the west. The Coavrrek (Tjuarek) area is very rich in pasture also in the autumn. The need for smooth transition to different forms of pasture described above with regard to spring pasture, applies also in the autumn, when the reindeer prepare for returning to the lichen rich winter pasture areas. Coavrrek (Tjuarek) is also a good watering area, which is also important for the reindeer's preparation for the winter. Autumn and early winter pasture is critical to the reindeer herding cycle. During this time of year, the reindeer must have access to excesses of pasture, and peace to feed. The reindeer's anatomy renders it uniquely fit to survive the harsh Arctic winter. The reindeer is capable of storing reserves build up during the autumn in its body, energy which is then gradually portioned out in the reindeer's system during the winter, complimenting the winter pasture. This characteristic of the reindeer allows it to survive the winter, as pasture during this season is normally so scarce that the reindeer could not survive on it alone. This is why the autumn pasture is so extremely important to the reindeer herding cycle. The minimal autumn pasture area that Girjas is left with, adjacent to three industrial sites, can simply not sustain a reindeer herd with the critical autumn pasture. Without autumn land, it is not possible to pursue Sami reindeer herding. Only a fraction of Girjas herd would survive the very first winter with such limited grazing land available to build up reserves, in particular when considering that the reindeer are also disturbed by mines and roads in the vicinity.

4.10 The autumn land is also where the reindeer mate. During the rut, the reindeer bull needs large areas to mark its territory. Mining activities disturbing the bulls impact negatively on the herd's reproduction. As Kiruna Iron's open pit mining system consumes almost all of Girjas rut land, the mining activities will heavily reduce the reproductive capacity of Girjas' herd.

4.11 Girjas has not traditionally used the Coavrrek (Tjuarek) for winter pasture. But extensive logging in Girjas' regular winter pasture increasingly compels the community to rely on the Coavrrek area also during winter. The area is rich in tree-hanging lichen. Further, the snow-blanket is normally thinner here than in Girjas' regular lower-altitude winter pasture area. Consequently, 2-3 of Girjas' winter groups partly use the Coavrrek area also during regular winters. During crisis winters, when the reindeer have difficulties reaching pasture in the ordinary winter grazing areas due to e.g. too thick snow-blanket and/or icing, all Girjas' winter groups use the Coavrrek (Tjuarek) area for reserve pasture. During such years, the Coavrrek (Tjuarek) area is critical to Girjas' possibility to survive the winter. During the winter, the reindeer herders aim to find pasture areas allowing the reindeer to spend maximum time feeding peacefully and in one spot and minimum time roaming in search for pasture, as the reindeer moving implies energy loss. Due to the reindeer's complex anatomy, such energy loss cannot be compensated with richer pasture later in the winter. The weight-loss is permanent throughout the winter, as the reserves built up within the reindeer's body during autumn and early winter cannot be recharged in winter time. If all reserves are consumed, the reindeer is at imminent risk of starving to death. The Coavrrek (Tjuarek) area is Girjas only' refugee during crisis winters, as the community has no access to other areas rich in tree-hanging lichen, which is the reindeer's pasture of last resort when pasture on the ground is not accessible in winter time. In other words, during winters with bad pasture conditions in Girjas regular winter grazing area, the Coavrrek (Tjuarek) area is critical to Girjas. The area is consequently indispensable to Girjas also as winter pasture. It is not sufficient that the reindeer find pasture most winters. It only takes one winter without sufficient pasture to extinguish the herd.

4.12 In addition to destroying indispensable pasture areas, Kiruna Iron's open pit mining system cuts off Girjas' migration route between the summer and winter pasture areas, as the maps attached as Appendixes 3 and 4 show. Girjas' only migration route between the summer and winter pasture areas goes straight through the Coavrrek (Tjuarek) area, exactly where Kiruna Iron's open pit mining system is located. Both when moving east to the winter pasture area and back west towards the summer land, the reindeer follow a mountain ridge going in the east-west direction. One of Kiruna Iron's open pit mines is located right on this mountain ridge, creating a hindrance the reindeer cannot pass. The mine cuts Girjas in half. There is no alternate route. To the north, the open pit mining system touches the border to Laevas Sami village, wherefore it is not possible for Girjas to pass the mining system to the north. Southwest of the mountain ridge there is lowland, almost like a cavity, which it is not possible for the reindeer to pass. To the south of the open pit mining system, there is a small strip between the industrial area and the border to Baste Sami village. But this area consists of sallow forest, through which it is impossible to move a reindeer herd. There is also a creek with sharp slopes that the reindeer will not pass. Thus, Girjas cannot avoid Kiruna Iron's open pit mining system by migrating further south either. In sum, in addition to destroying

most of Girjas' spring and autumn pasture areas, and key winter pasture land, Kiruna Iron's open pit mines, industrial sites and associated infrastructure, cut Girjas into two, rendering it impossible to migrate between the winter and summer pasture areas. It is not possible for Girjas to continuously pursue traditional Sami reindeer herding with the mining system dividing its land into two. The reindeer herding cycle through which Girjas has operated since time immemorial is all of a sudden abruptly interrupted twice a year, in a manner that it is not possible to adapt to. No mitigation measure can be undertaken that allows the reindeer herders and their reindeer to pass the industrial area.

4.13 In sum, Kiruna Iron's open pit mining system, associated infrastructure, noise buffer-zone and dust-fall, destroys pasture areas absolutely indispensable to Girjas. It is a prerequisite for Sami reindeer herding that the herders can find sufficient, and suitable, pasture for the reindeer every season, every year. In addition, the reindeer herders must be able to migrate with the reindeer between the various pasture areas. Kiruna Iron's open pit mining system, and the infrastructure associated with them, results in the 16 authors no longer being able to find sufficient and adequate pasture during spring and autumn. The mining activities in addition render it impossible for the authors' reindeer to survive crisis winters. In addition, Kiruna Iron's open pit mining system blocks Girjas' migration route between the summer and winter pasture areas.

4.14 It is not possible for Girjas to adjust to the presence of Kiruna Iron's open pit mining system in the heart of its traditional territory. Without spring, autumn and winter pasture, and without being able to migrate with the reindeer between the various pasture areas, one can simply not pursue traditional Sami reindeer herding. Kiruna Iron's open pit mining system force all 14 authors out from their traditional territory and out of the traditional livelihood their forefathers have pursued since time immemorial, and which they wish - and have the right - to pass on to their children.

4.15 As described, the Coavrrek (Tjuarek) area is at the heart of Girjas' traditional territory, and has been so since time immemorial. As a consequence, the area hosts a number of sites sacred to the authors, vital to their cultural identity. In particular, a large number of graves and places of sacrifice are situated within and adjacent to the mining area, including a number of sieide, stones or tree-trunks formed by nature marking the presence of spirits in the area, to which the Sami sacrifice. The Coavrrek (Tjuarek) area is also full of archeological Sami remnants, such as old reindeer paddocks, old housing and cocking sites etc., some of which date back more than 1000 years. It is here that Girjas, as far as anyone can remember, has convened for community meetings. The Coavrrek (Tjuarek) area's significance to the Sami culture in general and to Girjas in particular is underscored by it being classified as a Swedish national interest for the protection of cultural heritage. As such, it is protected by Chapter 3, paragraph 6, of the Swedish Environmental Code and

Chapter 2 of the Cultural Heritage Act. The cultural heritage sites in the Coavrrek (Tjuarek) area are marked on a map attached as **Appendix 5**. (Graves and places of sacrifice are not marked, for cultural reasons. Official documents do, however, confirm that a number of graves and places of sacrifice are situated within the area. This also follows from the names the places have in the Sami language, as the below outlines.) Of the places of cultural and spiritual value to Girjas in the area, worth mentioning are in particular the following. *Biedjacohkka* is a sacred area, with a number of places of sacrifice. Sami spirits are unusually present in the area. *Bassicohkka* is a sacred mountain. According to Sami culture/religion of the region, rigid restrictions apply as to how in particular Sami women are allowed to travel across the mountain. Violation of the code results in problem in reindeer herding. (“*Bassi*” in the Sami language means sacred. The use of the word on a place designates a sacred place where a religious event or activity has taken place.) *Bassioaivi* is a creek which marks the border to a sacred area. Norms given by culture/religion regulates the way Sami behave within this area as well. *Haldinargga* is a tongue of land in the lake *Sáiva*, a sacred area as well. (“*Haldi*” in the Sami language means an underground protector. “*Saiva*” is another name for sacred, often used in connection with e.g. lakes.) *Ailladis* is another sacred mountain in the area. (“*Ailes*” is yet another word for sacred in the Sami language.) The full importance of these areas to the cultural and spiritual identity of the authors cannot be understood, if viewed in isolation. Together, the sacred places in the Coavrrek/Tjuarek area form a system that manifests the Sami belief system in the area. Through its refusal to withdraw from the area despite the authors’ protests, Kiruna Iron demonstrates complete disrespect for these sacred places, the history, culture and cultural identity of the authors, and the Sami culture in general. The fact that Kiruna Iron’s mining activities destroy a number of sites sacred to Girjas and its members aggravate the violation of the right to property, as enshrined in Article 5 (d) (v) of the Convention.

#### *The administrative process*

4.16 On [date] the, Swedish Mining Authority (*Bergmästaren*) decided to grant Kiruna Iron concession to mine in Mining Areas A, B and C. On [date], Girjas appealed the decision to the Swedish government. On [date], the government decided to uphold the Mining Authorities’ decision, and allow Kiruna Iron to proceed with the mining. The decision by the Swedish government on [date] cannot be appealed, and is thus final.

## **5. VIOLATION OF ARTICLE 5 (d) (v) OF THE CONVENTION**

### *Girjas is in possession of property rights within the meaning of Article 5 (d) (v) of the Convention*

5.1 This communication asserts violation of the right to property as enshrined in Article 5 (d) (v) of the Convention with regard to two different forms of property; property in the

form of land and natural resources and property in the form of a right to continuously pursue traditional Sami reindeer herding.

5.2 Girjas has pursued traditional Sami reindeer husbandry on the area in dispute since time immemorial. Through traditional use, Girjas has established property rights to the land area covered by the communication, as well as to natural resources situated on this land. Under Swedish law, it is undisputed that traditional Sami land use results in property right in the form of usufruct right, whereas the ownership issue remains outstanding. For the present purposes this irrelevant, as both Sami usufruct and ownership rights are protected as property pursuant to Article 5 (d) (v) of the Convention, as well as under the Swedish Constitution (Chapter 2, Section 15, *Regeringsformen*).

5.3 As the Committee is aware, in General Recommendation No. 23 it concurs that depriving indigenous peoples of their traditional lands constitutes a specific form of discrimination directed against them, calling on states to “*recognize and protect the rights of indigenous peoples to own, develop [and] control*” their lands and natural resources. The Committee underlines that the general right to property enshrined in the Convention Article 5 (d) (v) apply also to indigenous peoples’ collective land use. The Committee has affirmed this understanding of Article 5 (d) (v) in various country specific observations.<sup>1</sup> The conclusion is in keeping with the UN Declaration on the Rights of Indigenous Peoples Article 26.

5.4 In sum, Girjas holds a property right relevant to Article 5 (d) (v) of the Convention to the land where Kiruna Iron pursues open pit mining.

5.5 Under Swedish law, the right to pursue Sami reindeer herding belongs to persons that (i) are of Sami origin, and (ii) are members of a Sami village.<sup>2</sup> For members of Sami villages, the right to continuously pursue reindeer herding is protected as a property right under e.g. Section 1 of the Additional Protocol to the European Convention on Human Rights,<sup>3</sup> and hence under Swedish law. Consequently, in addition to lands and natural resources traditionally used, the authors’ hold property rights relevant to Article 5 (d) (v) of the Convention also in the form of rights to continuously pursue Sami reindeer herding.

*Pre-requisites for legitimate dispossession of property*

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<sup>1</sup> See e.g. A/56/18(SUPP) (Sri Lanka), para. 335, CERD/C/64/CO/9 (Suriname), para. 11, CERD/C/MEX/CO 15 (Mexico) and A/51/18/ (SUPP) (Botswana), in particular paras. 304-305.

<sup>2</sup> Chapter 1, Section 1, of the Swedish Reindeer Herding Act

<sup>3</sup> Ruling by the European Court on Human Right in *O.B. and Others v. Norway*, Appl. No. 15997/90, Judgement of 8 January 1993, and *Handölsdalen Sami Village and Others v. Sweden*, Appl. No. 39013/04, Judgement of 30 March 2010

5.6 There are essentially two ways in which Girjas can be legitimately disposed of its property. First, an agreement could be reached with Girjas according to which the community consents to dispose of parts of or its entire property. This alternative should always be the first option. In the present case, neither the Swedish state nor Kiruna Iron has attempted to reach an agreement with Girjas.

5.7 Alternatively, and the only option remaining as no agreement has been reached, Sweden can seek to expropriate the land, natural resources and the rights to pursue reindeer herding. But in the present case, the criteria necessary to fulfill in order to legally pursue expropriation are not met. Sweden has consequently not gone through such a procedure either.

#### *The proportionality criterion*

5.8 Girjas accepts that the right to property is not absolute, but at the same time underlines that limiting the right to property through expropriation requires that certain criteria are met. The limitation must (i) fulfill a legitimate societal need<sup>4</sup>, (ii) be prescribed by law, i.e. be foreseeable,<sup>5</sup> and (iii) be proportionate, i.e. must not imply a “*disproportionate and excessive burden*” on the property right holder.<sup>6</sup> In this context, it is the proportionality criterion, viewed in light of the legitimate societal need criterion, which is relevant.

5.9 When evaluating whether an intrusion into an indigenous people’s traditional territory constitutes a proportionate limitation in its property right to land and natural resources, one must recognize the paramount importance of lands and natural resources to indigenous peoples’ cultures, identities and ways of life. Evaluations of whether the proportionality criterion is met in non-indigenous contexts often boils down to whether the individual property rights holder has received market value compensation for the damage caused by the limitation.<sup>7</sup> In an indigenous context, this test does not apply. Monetary compensation can perhaps in some instances mitigate some damages suffered. But most often, the taking and/or destruction of lands and natural resources traditionally used by an indigenous community causes such harm to the core of the community’s, livelihoods, culture and cultural identity, that monetary compensation is of no use. When measured against the value of indigenous peoples’ livelihoods, culture and cultural identity, money can rarely render a limitation proportionate. Moreover, even what to a non-member may appear as a

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<sup>4</sup> Compare Additional Protocol 1 to the ECHR, Article 1.

<sup>5</sup> Compare e.g. the ECHR’s ruling in *Carbonara and Ventura v. Italy*, Appl. No. 24638/94 (30 May 2000), para. 64.

<sup>6</sup> Compare e.g. ruling by European Court of Human Rights in *Hutten-Czapska v. Poland*, Appl. No. 35014/97, Judgment of 19 June 2006, and *Evaldsson and Others v. Sweden*, Appl. No. 75252/01, Judgment of 13 February 2007.

<sup>7</sup> See e.g. the European Court of Human Rights’ ruling in *James and Others v. United Kingdom*, Appl. No. 8793/79 (21 February 1986), paras. 54 and 55.

minor damage may still have devastating effects on an indigenous community, in particular if considering cumulative effects. For these reasons, the Committee and other UN bodies have inferred that the threshold before the proportionality test is no longer met is low with regard to limitations in indigenous communities' property right to land and natural resources traditionally used.

5.10 As the Committee is aware, the conclusion above finds support in previous findings by the Committee, where it has elaborated on its General Comment No. 23. We refer here in particular to Concluding Observations on (i) Cambodia, where the Committee calls on the State party to delay industrial concessions until the indigenous community's consent has been obtained,<sup>8</sup> (ii) Peru, where the Committee called on the State party to "*obtain [indigenous communities'] consent before plans to extract natural resources are implemented*",<sup>9</sup> (iii) Chile, where the Committee called on the State party to "*obtain [indigenous communities'] consent prior to implementation of projects for the extraction of natural resources*" and further to "*ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests*",<sup>10</sup> Ecuador, where the Committee called on the State party to "*obtain consent [of the indigenous community concerned] in advance of the implementation of projects for the extraction of natural resources*",<sup>11</sup> Guatemala, where the Committee called on the State party to "*obtain [indigenous communities'] consent before executing projects involving the extraction of natural resources*",<sup>12</sup> and Canada, where the Committee called on the State party to "*[i]mplement in good faith the right to ... free prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands...*".<sup>13</sup> We also draw the Committee's attention to the Early Warning and Urgent Action Procedure against the United States in the *Western Shoshone Case*, where the Committee - in light of indigenous peoples' right to own and control their ancestral land - expresses concern e.g. with regard to open pit mining within Western Shoshone land.<sup>14</sup> Finally, we refer here to the Committee's recent Concluding Observations with regard to Finland. In these Concluding Observations, the Committee underscores that Finland's Mining Act insufficiently protects Sami reindeer herding communities, as it allows mining projects to go ahead without the free, prior and informed consent of the community.<sup>15</sup> (The Finnish Mining Act only provides for consultation, and protection of culture in line with the Covenant on Civil and Political Rights Article 27.) The Swedish Mining Act protects the interest of Sami reindeer herding communities to a lesser degree than its Finnish counterpart.

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<sup>8</sup> CERD/C/KHM//CO/8-13, para. 16

<sup>9</sup> CERD/C/PER/CO/14-17, para. 14

<sup>10</sup> CERD/C/CHL/CO/15-18, paras. 22 and 23

<sup>11</sup> CERD/C/ECU/CO/19, para. 16

<sup>12</sup> CERD/C/GTM/CO/12-13, para. 11 (a)

<sup>13</sup> CERD/C/CAN/CO/19-20, para 20 (a)

<sup>14</sup> Decision 1 (68), CERD/C/USA/DEC/1, para. 7

<sup>15</sup> CERD/C/FIN/CO/20-22, para. 13 (Advanced unedited version)

5.11 The UN Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the Rights of Indigenous Peoples have concurred that indigenous peoples' right to own and control lands and natural resources traditionally used embraces a right to consent or not consent before resource extraction occurs on such territories.<sup>16</sup>

5.12 In sum, absent its consent, expropriation of an indigenous community's lands and natural resources for extractive industry purposes is, as a general rule, not allowed due to failing to meet the proportionality criterion. The exception may be if it can be established that the infringement causes only minor harm to the livelihoods, culture and cultural identity of the indigenous community - taking cumulative effects into account - at the same time as the industrial enterprise is of genuine significant importance e.g. because of generating great wealth to society and/or because of substantially reducing unemployment in a region.

5.13 As the Sections above demonstrate, Kiruna Iron's mining activities have much more than minor negative impacts on Girjas' and the authors' property. As explained, pursuing traditional Sami reindeer husbandry presupposes access to suitable pasture areas during all seasons of the yearly cycle, as well as migration paths between the various pasture areas. Kiruna Iron's mining activities are in general detrimental to Girjas and the authors. But in particular, the mining activities (i) leave Girjas and the authors without suitable autumn and spring pasture areas, with additional significant negative effects on the mating and calving of the reindeer, (ii) in addition leave Girjas and the authors without winter pasture areas in snow-rich or for other reasons crisis winters, and (iii) completely cut Girjas into two, rendering it impossible to migrate between the summer and winter pasture areas, and vice versa. In sum, Kiruna Iron's mining activities limit the authors' property rights both with regard to (i) lands and natural resources, and to (ii) the right to continuously pursue traditional Sami reindeer husbandry, to an extent that force the authors out of the traditional livelihood which lays at the very core of their personal and cultural identity, and which their forefathers have pursued since time immemorial and which the authors' wish to pass on to their children.

5.14 Girjas has not consented to the limitation in its property rights.

5.15 Given the devastating effect Kiruna Iron's mining activities have on Girjas' property rights, and given that the community has not consented to the limitation, the limitation is not proportionate. It implies a "*disproportionate and excessive burden*" on the reindeer herding community. Hence, as a State party to the Convention, Sweden violates the right to property

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<sup>16</sup> Concluding Observations by the Committee on Economic, Social and Cultural Rights with regard to Ecuador, (UN Doc. E/C.12/1/add.100, para. 12), and Columbia (UN Doc. E/EC.12/Add.74, para. 12), and Report of the Special Rapporteur, Addendum A/HRC/9/9/Add.1.

pursuant to Article 5 (d) (v) when Swedish law and authorities allow Kiruna Iron's mining activities to proceed.

5.16 Even if the failure to meet the proportionality criterion viewed in isolation in itself amounts to a violation of the right to property, it is worth mentioning that the violation becomes even more apparent if the proportionality criterion is viewed in light of the legitimate societal need criterion. The authors do not contest that generally speaking, mining can qualify as a legitimate social need. But in this particular instance, Kiruna Iron's mining activities have very limited positive effects on society as a whole, both on a national and regional level. The profits from the mining activities benefit private share-holders<sup>17</sup>, most of them foreign, and not the Swedish state or the municipality. And the mining activities will not bring new jobs to the Kiruna region, as the region has a deficit of mining workers.<sup>18</sup>

5.17 In addition, neither Kiruna Iron nor the Swedish state has offered or even contemplated benefit-sharing arrangements with Girjas. Although, as clear from the above, Girjas is not interested in monetary compensation, as livelihood, culture and cultural identity cannot be measured in monetary terms, the fact that benefit-sharing has not even been contemplated underscores the disproportionality of the limitation.<sup>19</sup>

*Further on Sweden's failure to realize and operationalize the Girjas' right to property*

5.18 The present issue is a result of Sweden's failure to properly address Sami land and resource rights, despite repeated UN criticism calling on the country to do so.

5.19 As it is aware, in concluding observations in 2008, the Committee noted that Sweden had informed the Committee of its intention to address various aspects of Sami land and resource rights in a bill to be presented to the Swedish Parliament in March 2010. Contrary to the report, however, when presented, the bill did not address Sami land rights. (For mainly this reason, the bill was heavily criticized and subsequently shelved.) In the same Concluding Observations, the Committee recommended Sweden to take concrete action to

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<sup>17</sup> Sweden is rather unique in that it does not charge any royalty or similar fees from corporations extracting minerals in the country.

<sup>18</sup> As a consequence, most workers will be brought in on the 7 days/7 days system, i.e. they work for seven days, and then go home for seven days. These kind of migrant workers bring no tax-benefits to the region either.

<sup>19</sup> See Concluding Observations on Suriname, CERD/C/SUR//CO/12, 3 March 2009, where the Committee underscores that indigenous peoples' property right to lands and natural resources pursuant to Article 5 paragraph (d) (v) of the Convention entitles indigenous peoples to participate in the exploitation of natural resources associated with land. Regional human rights institutions concur, see e.g. the Inter-American Court on Human Rights, *Saramaka People v. Suriname* (Inter-Am. Ct. H. R. (Ser. C) No. 172 (2008)) and African Commission on Human and People's Right, *Enderois People v. Kenya* (Comm. 276/2003 (2010)).

solve Sami land rights issues.<sup>20</sup> The Concluding Observations of 2008 repeated concerns expressed by the Committee in Concluding Observations of 2004, where the Committee, with reference to General Recommendation No. 23, also expressed concern over Sami land rights issues remaining unresolved.<sup>21</sup> Indeed, already in 2001, the Committee recommended the State party to introduce legislation reflecting the centrality of reindeer herding to the way of life of the Sami.<sup>22</sup>

5.20 In this context, we again draw the Committee's attention to its Concluding Observations on Cambodia, where the Committee recommends the State party to halt industrial concessions until the indigenous community's right to control its traditional land has been assessed.<sup>23</sup>

5.21 The Committee's concerns have been matched by other parts of the UN system. The UN Special Rapporteur on the Rights of Indigenous Peoples notes that although Sweden recognizes the Sami's right to pursue reindeer herding on lands traditionally used, in practice, these rights must often yield to competing interests. The Special Rapporteur further observes that the Sami way of life, in particular reindeer herding, is threatened significantly by competing land uses such as natural resource extraction, activities which are often promoted by the government. He points to that e.g. mining has resulted in loss of pasture land, with detrimental effects on reindeer movement and their reproductive levels and survival. The Special Rapporteur emphasizes that laws and policies in the Nordic States with respect to natural resource extraction do not provide sufficient protection for Sami rights and livelihoods. He underscores that in Sweden in particular, the Sami have faced increasing pressure from mining and wind-power development projects, and points to that the Swedish Mining Act does not contain provisions accommodating for rights relevant to the Sami, and that existing mining policies do not appear to be sufficient to protect Sami interest and rights over lands affected by mining. In his recommendations, the Special Rapporteur calls on Sweden to increase its efforts to develop legislation to address Sami land and resource rights.<sup>24</sup>

5.22 In its 2008 Concluding Observations on Sweden, the UN Human Rights Committee (HRC) calls on Sweden to resolve Sami claims to land and resources by introducing appropriate legislation.<sup>25</sup> Already in 2002, the HRC had expressed concern over the limited extent to which the Sami can influence decisions on industrial activities such as mining in their traditional territories.<sup>26</sup>

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<sup>20</sup> CERD/C/SWE/CO/18, para. 19

<sup>21</sup> CERD/C/64/CO/8, para. 12

<sup>22</sup> CERD/C/304/Add.103, para. 13

<sup>23</sup> CERD/C/KHM//CO/8-13, para. 16

<sup>24</sup> Report on the situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/18/35/Add.2, paras. 47, 55, 56, 58 and 83

<sup>25</sup> CCPR/C/SWE/CO/6, para. 20

<sup>26</sup> CCPR/CO/74/SWE, para. 15

5.23 Sweden has ignored all UN recommendations outlined above, including those by the Committee. Sweden has failed to enact legislation compelling mining companies to respect Sami reindeer herding communities' right to land, including property rights, despite repeated calls from the UN system. This should be regarded as an aggravating factor when evaluating whether Sweden is in violation of Article 5 (d) (v) of the Convention.

## **6. VIOLATION OF ARTICLES 5 (a) AND 6 OF THE CONVENTION**

Section 4.16 describes how the decision to limit the authors' property rights in the form of land and to pursue reindeer husbandry is taken by an administrative authority, and can only be appealed to the government. The authors are denied the right to appeal the decision on limitations in their property rights to a court of law. This denial amounts to a violation of their right to an effective remedy pursuant to Article 6 of the Convention. It also violates their right to equal treatment before tribunals pursuant to Article 5 (a), as it is only Sami reindeer herders that are denied the right to an effective remedy with regard to decisions on limitations in property rights in Sweden.

## **7. DOMESTIC REMEDIES**

7.1 As Section 4.16 describes, the decision by the Swedish government to allow Kiruna Iron's mining activities cannot be appealed. Consequently, there is no available effective domestic remedy through which the authors would have any prospect of having the ongoing violation of the Convention terminated or suspended.

7.2 It is requested that the Committee urgently registers the current communication, and calls on the State party, as an interim measure of protection, to immediately halt Kiruna Iron's industrial activities. This should happen until a date when the State party has had reasonable time to respond to this communication, and the Committee has had the chance to consider whether the requested interim measures of protection should be retained or lifted.

Tromsö, *20.11.2012*

Mattias Åhrén