

## 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. Includes an URGENT request for interim measures of protection.

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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 rights to an effective remedy and equal treatment before tribunals)

**1. APPLICATION**

1.1 On behalf of Laevas, 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 open pit mining within a land area where Laevas pursues reindeer herding, a traditional livelihood of the indigenous Sami people, and has done so since time immemorial. Through traditional use, Laevas has established a property right to the land area in question. Laevas has not consented to Kiruna Iron entering its territory. The mining activities destroy pasture areas within Laevas' traditional territory, which are indispensable to the community. The activities further block Laevas' migration route between the winter and summer pasture areas. Without the area consumed by Kiruna Iron's open pit mining and without the migration route, Laevas can no longer continuously pursue traditional Sami reindeer herding. Laevas members (i.e. the authors) are being forcefully relocated from their traditional territory. 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, Laevas' 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 Laevas members' no longer being able to pursue Sami 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 the members' right to pursue Sami reindeer herding.

1.4 The decision to limit the property rights is taken by an administrative authority. It can only be appealed to the Swedish government. Laevas is hence denied the right to defend its property rights before a court of law. This amounts to a violation of the rights 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 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 was pursued in family groups consisting of a couple of families, known as *siidas*. Following colonization, Sweden administratively divided Sami reindeer herders into so called Sami villages (*samebyar*). 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. Migration patterns vary between different regions within the Sami traditional territory. In the region where Laevas 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 pre-winter, winter, and early spring pasture areas, when reindeer herding is sensitive to weather, snow-depth, ice conditions and other factors impacting on grazing conditions. During spring,

summer and autumn, Sami villages commonly keep all 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 LAEVAS 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 since time immemorial. According to Swedish administrative regulation, at any given time, Laevas' members may together hold a maximum of 8,000 reindeer.

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

3.3 Laevas' summer pasture area (marked with light yellow on Appendix 1) consists of high-altitude mountains stretching from *Cunovuopmi*, Luohhti, in Norway in the west to the *Vistasvággi-Vierrujohka* mountain ridge in the east. To the south, Laevas has a natural border onto Girjas Sami village through the Kalix River system and steep mountain slopes. To the north, Laevas' traditional territory stretches to the Rauta River system and further west through *Ahpparjávri* into Norway. The autumn pasture area (marked with red on Appendix 1), consists of low-altitude mountains and stretches from the *Vistasvággi-Vierrujohka* mountain ridge in the west and east to a border-fence raised by Laevas, stretching from *Rautasjaure* in the north to *Nikkaluokta* in the south and the main railroad in central northern Sweden (*stambanan*). Laevas' spring pasture area, which to some degree overlaps but is smaller than the autumn land (marked with stripes on red background on Appendix 1), stretches from the railroad in the east to the *Rautasjaure-Nikkaluokta* border-fence in the west. The railroad poses a great challenge to Laevas when moving the herds in both directions. It is critical for Laevas to get the herd over and away from the railroad to minimize the number of reindeer killed by trains. Laevas' winter pasture area (marked with blue on Appendix 1), consists of low altitude forested lands and stretches from *stambanan* to roughly 50 km east of Vittangi village in the east, where Laevas borders onto Tarendö Sami village. The borders between 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 and snow and ice conditions etc. heavily impact on what areas are used for pasture during the various seasons each year. For instance, as the below elaborates, during winters with unusually thick snow-blankets, Laevas may use what the above describes as spring pasture lands also during the winter months.

3.4 No year is like the other in reindeer herding. Weather and grazing conditions determine when Laevas moves the reindeer from one pasture area to another, and at what pace. But generally speaking, Laevas utilizes the spring pasture area from the end of April to the end of 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 November when Laevas round up the herd, divide it into the seven smaller winter groups, and migrate further east with their reindeer to the winter-pasture area. In April, the cycle starts all over again, the cycle starts all over again, when the winter groups move west to the spring land where the winter groups merge to form one big herd again.

#### 4. THE PRESENT ISSUE

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

4.1 Kiruna Iron's three open pit mines are situated in the heart of Laevas' traditional reindeer herding territory. Together, the three open pit mines form an industrial area of roughly 20 km<sup>2</sup>. (The location and size of the open pit mines and the associated industrial area is taken from a map that the authors have attained from Kiruna Iron, attached hereto as **Appendix 2**.) The industrial area consists of, in addition to the actual mines, water-dams for filtering rest-products from the mining activities, magazines for rest products, workshops, loading-places for ore, offices, facilities for employees etc. 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 the industrial area. The buffer-zone areas 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 the mining sites. In addition to consuming pasture areas, the industrial area is situated right on Laevas' migration route between the summer and winter pasture areas, thus completely blocking the migration route. (A map outlining Laevas' 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 Laevas' 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 establishes 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 The mining activities require that the main road in the area (the *Nikkaluoktavägen*) and the main railroad in central Sweden (*stambanan*) be re-drawn. This results in further destruction and fragmentation of Laevas’ pasture land. In total, Kiruna Iron’s mining activities results in an additional 20-30 km of roads and railroads through Laevas’ traditional territory, as marked on Appendixes 3 and 4. As mentioned, reindeer typically shy away 4 km from roads and railroads, resulting in an additional loss of around 200 km<sup>2</sup> (2 x 4 x 25) pasture land.

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

*Further on the impact by Kiruna Iron’s mining activities on Laevas’ and its members’ possibility to continuously pursue traditional Sami reindeer herding*

4.6 Kiruna Iron’s open pit mining site is situated right on Laevas’ spring pasture area. In spring, all of Laevas’ winter groups, except for the one group already in the area, migrate west with their reindeer to the spring land, where the smaller winter groups once again come together 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, Laevas lets the herd go and the reindeer migrate unassisted up into the spring pasture area, stretching from the railroad and roughly 15 km west, where there is a sharp

shift in the terrain from low altitude to high altitude mountain areas, and where Laevas has also built a border-fence. (The border fence, and Laevas' entire spring pasture area is marked on the map attached as Appendix 3.) The low altitude mountain spring pasture area is, due to topography, and to largely consisting of wetlands, one of the first areas to be green and snow-free each spring, and thus where pasture first becomes easily accessible to the reindeer. The area is particularly suitable for spring pasture, as it is rich in lichen, but also offers good grass, leaves, and bush pasture. This mixture is important, as the reindeer's anatomy requires smooth transition from lichen dominated grazing in the winter to grass dominated summer pasture. The importance of access to pasture in the spring cannot be overstated. After the long Arctic winter, when pasture is scarce, the reindeer are in desperate need of snow-free pasture to feed. As the spring proceeds, the reindeer need to gradually move up in the mountains as the snow-line recedes, gaining access to a spring flora that is easy to digest. The map attached as Appendix 3 shows that Laevas' is in position of an unusually small spring pasture area. It only amounts to roughly 15 x 15 km, i.e. to 225 km<sup>2</sup>. Of this area, the adjacent mining activities of LKAB in and around Kiruna town have already consumed roughly 6 km x 5 km, or 30 km<sup>2</sup> in the north-east corner. Kiruna Iron's open pit industrial site borders to the railroad in the east, and stretches about 4,5 km west. This implies that the only spring pasture area left to Laevas following the establishment of Kiruna Iron's open pit mines is a square roughly amounting to 10 km x 9 km, or 81 km<sup>2</sup> in the south-west corner. Such a small winter land is in itself incapable of providing pasture to Laevas reindeer herd. But in addition, the noise buffer zone consumes essentially all of the remaining part of Laevas spring pasture area, as the pasture land stretches only 10 km west from Kiruna Iron's mining site. Kiruna Iron's mining activities pushes the reindeer up towards the snowline, where the herd may be able to feed for a few days only before the pasture ends. That is particularly so since, as mentioned, the dust-fall negatively impacts on the small patches of spring pasture remaining. In sum, Kiruna Iron's mining project leaves Laevas with essentially no spring pasture, incapable of sustaining a reindeer herd. Without spring pasture, it is not possible to pursue Sami reindeer herding. Laevas and its members (i.e. the authors) are forcefully relocated from their traditional land, and are forced out of their traditional livelihood.

4.7 Spring is the season when reindeer calve. As the map attached as Appendix 3 demonstrates, the western part of Kiruna Iron's mining sites stretches into the eastern parts of Laevas' calving lands. These calving lands are particularly important in snow-rich winters, when the higher altitude areas further to the west are still covered by snow when calving commences. As mentioned, reindeer cows are extremely sensitive to noise and other disturbances during the calving period. Laevas does its utmost to protect the cows from disturbances during this period, guarding them every hour, as even the smallest interference can cause miscarriages. In snow-rich winters, Kiruna Iron's open pit mining activities will have disastrous impact on the calving, resulting in substantial reduction of the herd. As a

reindeer cow about to calve is particularly sensitive to noise, she will shy up west towards areas where there is nothing to feed on.

4.8 In summer, Laevas' herd migrate further west up in 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 further negatively impacts on Laevas' autumn pasture. In the autumn, Laevas' herd roams east from the high-altitude mountain areas to more low-altitude land. During what could be described as regular autumns, Laevas halts the reindeer's migration east with the border-fence Laevas has raised between *Rautasjaure* in the north and *Nikkaluokta* in the south. During a regular autumn, Laevas' reindeer graze in the areas west of the border-fence until it is rounded up in November and divided into the seven winter groups, following which migration to the winter pasture areas ensues. (The border-fence has been raised to prevent the reindeer from migrating further east before the herd is broken-up into winter groups.) During such autumns, Kiruna Iron's mining activities have limited impact on Laevas' autumn pasture. But during autumns when snow and ice arrive early, Laevas cannot keep the reindeer in the regular autumn grazing area, as the reindeer cannot access sufficient pasture there under such conditions. During such crisis autumns, Laevas dismantles the border-fence and allows the reindeer to migrate further east into the area where Kiruna Iron's open pit mines are situated. As this area is on a lower altitude, it normally offers pasture also during crisis autumns. The area is particularly rich in lichen, but also in herbs, birch trees, mushrooms and grass. 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 area. Autumn and early winter pasture is of critical importance to the reindeer herding cycle. The reindeer has an anatomy uniquely fit to survive the harsh Arctic winter environment. The reindeer is capable of storing reserves built up during the autumn, energy which is then gradually portioned out in the reindeer's system during winter to compliment often scarce pasture, allowing it to survive the winter. This is why autumn pasture is extremely important to the reindeer herding cycle. If the reindeer do not have access to rich autumn pasture, and peace to feed, it is unable to build up reserves allowing it to survive the winter. In crisis autumns, when pasture in Laevas' regular autumn land is locked, the area where Kiruna Iron's open pit mines are situated are indispensable to Laevas, as it is the only area available to Laevas during such autumns. As the map attached as Appendix 4 shows, the open pit mining site, combined with the noise buffer-zone and dust-fall, has a similar impact on Laevas' crisis autumn pasture area as on the spring pasture area. The same small square of 9 x 10 km, i.e. 90 km<sup>2</sup>, is available to Laevas also during crisis autumns. Such a small area is in itself incapable of providing the critical autumn pasture to a reindeer herd. But again, this area is entirely covered by the noise buffer-zone. Kiruna Iron's mining activities will



halt the reindeer's migration east, making them stop in an area where pasture is way too scarce. With such disturbances in the autumn pasture, not many reindeer will survive the winter. In sum, Kiruna Iron's open pit mining industrial area consumes essentially all of Laevas' crisis autumn pasture area. In addition, the dust-fall will heavily negatively impact on the lichen pasture in the area, resulting in more grass vegetation. This is detrimental, as the reindeer need to gradually adjust to lichen pasture in the autumn, preparing for the totally lichen dominated pasture in the winter. Consequently, Kiruna Iron's mining project leaves Laevas with insufficient autumn pasture as well, since it is not enough for the reindeer to find pasture most autumns. It only takes one autumn without pasture to extinguish the herd. In addition, the area where Kiruna Iron's mining site is located fulfills an important purpose also during regular autumns. When Laevas opens up the border-fence, the reindeer need to gradually proceed towards the winter pasture areas, having access to rest pasture in areas where it momentarily halts. This is not possible with Kiruna Iron's mining site in the area. It leaves the reindeer without rest pasture during a period of the year when it is critical for the reindeer to proceed slowly and to gradually build up energy reserves.

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 can be deduced from the above, during regular autumns, Laevas can manage the negative impact of Kiruna Iron's mining activities on the rut. But during crisis autumns, the mining activities considerably negatively impact on the rut, heavily reducing the reproductive capacity of Laevas' herd.

4.11 As mentioned, Kiruna Iron's open pit mining site is also winter pasture land for one of Laevas' winter groups, to which four members (i.e. four authors) belong. The destruction of the area by the mining activities deprives these members of their entire winter pasture area. Moreover, during winters with extremely deep snow blankets, the area is important to all Laevas' members (i.e. the authors). Considerable parts of Laevas' winter pasture areas are situated in relatively low altitude pine forests exposed to considerable amounts of snow in snow-rich winters. The area affected by Kiruna Iron's mining activities is on a higher altitude and consists mainly of birch forests, offering more accessible pasture during extremely snow rich winters. In other words, during winters with bad pasture conditions in the main winter grazing area, the area where Kiruna Iron's open pit mines are situated is critical to all Laevas' members (i.e. to the authors).

4.12 Without winter pasture, it is not possible to pursue reindeer herding. During winter, reindeer herders aim to find pasture areas allowing the reindeer to spend maximum time feeding peacefully in one spot and minimum time roaming in search of pasture, as 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 the autumn and early winter cannot be recharged in winter time. When all such reserves have been used, the reindeer is at imminent risk of starving to death. The area is Laevas only' refuge 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. The area is consequently indispensable to the entire Laevas Sami village 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.

4.13 In addition to destroying indispensable pasture areas, Kiruna Iron's open pit mining industrial site cuts off Laevas' migration route between the summer and winter pasture areas. As the maps attached as Appendixes 3 and 4 show, north of Kiruna Iron's mining sites are Kiruna town and LKAB's enormous mining area, with associated infrastructure. Kiruna Iron's and LKAB's industrial sites borders to one another, leaving no natural path in between. To the south, on the small strip between Kiruna Iron's industrial area and the border to Girjas Sami village is rocky terrain with a creek running through, rendering it impossible to use this strip to migrate with the reindeer. As indicated, Laevas is already under extreme pressure from existing industrial projects, in particular LKAB's mining activities in the northern part of the autumn and spring pasture areas. As a consequence, it has already been necessary to take mitigation measures, should it at all be possible for Laevas to continuously migrate between the winter and summer pasture areas. Appendixes 3 and 4 show how the main railroad in central Sweden (*stambanan*) has been redirected as a result of the expansion and reallocation of Kiruna town, in turn a result of LKAB's expanding mining activities. The new route takes the railroad around LKAB's mining area to the south-west, and hence straight through Laevas' spring and autumn land. In order to avoid that the trains kill reindeer, LKAB has agreed to fence in the railroad as it passes through Laevas land. To keep Laevas' migration route open, allowing the reindeer to pass the railroad, LKAB has constructed a 50 meter wide so call ecoduct, or ecopassage, a kind of bridge, so that the reindeer can walk over the railroad when migrating from the winter to the summer pasture areas, and vice versa. (The ecoduct is marked on the maps attached as Appendixes 3 and 4.) In addition, a new road is constructed, running south-east from Kiruna town through Laevas spring and autumn pasture land, also passing straight through Kiruna Iron's open pit mining site, ending in *Nikkaluokta*. (The road, to be finalized in 2015, is also marked on the maps attached as Appendixes 3 and 4.) In order to lead the reindeer towards the ecoduct, and to avoid that individual reindeer accidently roam towards LKAB's industrial area, LKAB has agreed to fence in the road, leaving only one gap to allow the reindeer to pass, sending them off towards the ecoduct when moving west. Conversely, when returning from the summer pasture areas to the winter pasture land, the reindeer must first pass over the ecoduct, and are then directed towards the gap in the fence at the *Nikkaluokta* road. In short, only one route is currently available to Laevas when migrating

from the winter to the summer pasture area, and vice versa. There have been considerable investments in infrastructure to keep this migration route open. Now Kiruna Iron's open pit mines and associated industrial sites completely blocks the migration route. No further mitigation measures can be undertaken allowing the reindeer herders and their reindeer to pass the industrial area. It may be possible to build a bridge over a railroad, but not over an enormous mining site. The blocking of the migration route also renders it impossible for Laevas and its members (i.e. the authors) to pursue traditional Sami reindeer herding, as the mining site divides Laevas' land into two.

4.14 In sum, Kiruna Iron's open pit mines, associated infrastructure, noise buffer-zone and dust-fall, destroy pasture areas absolutely indispensable to Laevas. 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 mining activities, and the infrastructure associated with them, leaves Laevas and the 18 authors with essentially no spring pasture. The mining activities further deprive them of all pasture areas available to them during crisis autumns. One crisis autumn hence extinguishes the herd. The mining activities in addition render it impossible for the authors' reindeer to survive crisis winters. With regards to four of the authors, Kiruna Iron's mining activities result in them no longer being able to find sufficient and adequate pasture during three major seasons; spring, autumn and winter, as these four authors have their regular winter pasture areas where Kiruna Iron's open pit mining sites are located. In addition, Kiruna Iron's mining activities block Laevas' migration route between the summer and winter pasture areas.

4.15 It is not possible for Laevas to adjust to the presence of Kiruna Iron's mining activities 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 mining activities forcefully relocate all 18 authors from their traditional territory and force them 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.

4.16 As described, the area where Kiruna Iron's open pit mining site is situated is at the heart of Laevas' 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 number of graves and places of sacrifice are situated within and adjacent to the mining area. The area is also full of archeological Sami remnants such as old reindeer paddocks, old housing sites etc., dating back several centuries. The cultural heritage sites in the area are marked on a map attached as **Appendix 5**. (Graves and places of sacrifice are not marked, for cultural reasons.) 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 Laevas and its members aggravate the violation of the right to property, as enshrined in Article 5 (d) (v) of the Convention.

#### *The administrative process*

4.17 On [date] the, Swedish Mining Authority (*Bergmästaren*) decided to grant Kiruna Iron concession to mine in the area in dispute. On [date], Laevas 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**

#### *Laevas 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 Laevas has pursued traditional Sami reindeer herding on the area in dispute since time immemorial. Through traditional use, Laevas 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 is 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

reaffirmed 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, Laevas 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*

5.6 There are essentially two ways in which Laevas' property can be legitimately taken. First, an agreement could be reached with Laevas according to which the community consents to dispose of parts of or its entire property. In the present case, neither the Swedish state nor Kiruna Iron has attempted to reach an agreement with Laevas.

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.

#### *The proportionality criterion*

5.8 Laevas 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

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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

<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.

*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 community'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, what to a non-member may appear as a minor damage may still have devastating effects on an indigenous community, in particular if counting in 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 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*

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<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.

<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

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 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, where 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 Swedish Mining Act protects the interest of Sami reindeer herding communities to a lesser degree than its Finnish counterpart.

5.11 The UN Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the Rights of Indigenous Peoples concur that indigenous peoples’ right to 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 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 impact on Laevas’ and the authors’ property. As explained, pursuing traditional Sami reindeer herding 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 detrimental to Laevas and the authors, as the activities (i) leave Laevas and the authors essentially without autumn and spring pasture areas, with

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<sup>11</sup> CERD/C/EQU/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)

<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.

additional significant negative effects on the mating and calving of the reindeer, (ii) leave four of the authors without winter pasture areas all years and most of the authors without winter pasture in snow-rich or for other reasons crisis winters, and (iii) completely cut Laevas 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 herding, to an extent that forcefully relocate the authors from their traditional territory and force them out of the traditional livelihood, which lays at the very core of their personal cultural identity.

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

5.15 Given the devastating effect Kiruna Iron's mining activities have on the authors' property rights, and given that they have not consented to the limitation, the limitation is not proportionate. It implies a "*disproportionate and excessive burden*" on the authors'. Hence, as a State party to the Convention, Sweden violates the right to property 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 in itself amounts to a violation of the right to property, it is worth adding 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, most of them foreign, and not the Swedish state or the municipality.<sup>17</sup> And the mining activities will not bring new jobs to the 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 Laevas. Although, as clear from the above, Laevas 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>

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<sup>17</sup> Sweden is rather unique in charging essentially no 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 them to participate in the exploitation of natural resources associated with their traditional land. Regional human rights



*Further on Sweden's failure to realize and operationalize the 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 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 it recommends the State party to halt industrial concessions until indigenous communities' right to control their traditional lands have 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 face increasing

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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)).

<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

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>

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 4.17 describes how the decision to limit the authors' property rights 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 4.17 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.

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<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

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