**UNITED NATIONS**

**OFFICE OF THE UNITED NATIONS**

**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

**_unlogo**

**Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment**

Individual Report on the International Covenant on Civil and Political Rights

Report No. 2

Prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment

December 2013

# Introduction

## Summary of the Research Process

## Overview of the Report

# Human Rights Threatened by Environmental Harm

## Right of Minorities to Enjoy their Culture

## Right of a People to Natural Wealth and Resources/Means of Subsistence

## Right to Life

## Right to a Home and Family Free from Arbitrary or Unlawful Interference

# Obligations on States relating to the Environment

## Procedural Obligations

## Substantive Obligations

# Cross-Cutting Issues

## Obligations Relating to Non-State Actors

## Obligations Relating to Future Generations

# Conclusions

# INTRODUCTION

1. This report outlines human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment under the International Covenant on Civil and Political Rights (“ICCPR”) and the First Optional Protocol to the ICCPR,[[1]](#footnote-1) as elaborated by the Human Rights Committee (the “Committee”), the body created by the ICCPR to oversee compliance with its obligations.[[2]](#footnote-2)
2. This report is one of a series of 14 reports that examine human rights obligations related to the environment, as they have been described by various sources of international law in the following categories: (a) UN human rights bodies and mechanisms; (b) global human rights treaties; (c) regional human rights systems; and (d) international environmental instruments. Each report focuses on one source or set of sources, and all reports follow the same format.

3. These reports were researched and written by legal experts working *pro bono* under the supervision of John H. Knox, the UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. In March 2012, in Resolution 19/10, the Human Rights Council established the mandate of the Independent Expert, which includes, *inter alia*, studying the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and reporting to the Council on those obligations.

4. In his first report to the Council, U.N. Doc. A/HRC/22/43 (24 December 2012), the Independent Expert stated that his first priority would be to provide greater conceptual clarity to the application of human rights obligations related to the environment by taking an evidence-based approach to determining the nature, scope and content of the obligations. To that end, he assembled a team of volunteers to map the human rights obligations pertaining to environmental protection in as much detail as possible. The results of the research are contained in this and the other reports in this series.

5. The Independent Expert’s second report to the Council, U.N. Doc. A/HRC/25/53 (30 December 2013), describes the mapping project and summarizes its conclusions on the basis of the findings of the 14 specific reports. In brief, the main conclusions are that the human rights obligations relating to the environment include procedural obligations of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to remedies, as well as substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. States are also subject to a general requirement of non-discrimination in the application of environmental laws, and have additional obligations to members of groups particularly vulnerable to environmental harm, including women, children and indigenous peoples.

## Summary of the Research Process

6. In addition to the text of the ICCPR and its First Optional Protocol, this report is based on an examination of certain primary materials produced by the Committee in relation to its responsibilities for the promotion and protection of the human rights under the ICCPR.

7. The following categories of ICCPR documentation were reviewed:

(a) General Comments;

(b) Annual Reports;

(c) Lists of Issues and Written Replies;

(d) Concluding Observations on the reports of State parties to the Committee;

(e) Views of the Committee on submissions received under the Optional Protocol (which this report sometimes refers to as its “jurisprudence”); and

(f) other substantive statements by the Committee.

8. Examination of some categories of materials listed above (Annual Reports, Lists of Issues and Written Replies, and Concluding Observations) was limited to documentation produced between 1991 and 2012. Separate documents related to Views of the Committee on submissions were reviewed as far back as 2005 (the limit of the available information in the applicable data source).[[3]](#footnote-3) Of the documentation reviewed—except for General Comments, Views, General Recommendations, and substantive statements—research was narrowed to those materials containing relevant search terms.

9. The search terms used are set forth in the table below:

|  |  |  |
| --- | --- | --- |
| * Environment\* * Water * Flood * Drought * Storm * Hurricane * Ecolog\* * Sustain\* * Sanitary * Toxic * Stockholm Declaration * Aarhus * Biodiversity * Chemical * Deforest\* | * Natural Resources * Climate * “Global warming” * Emission\* * Greenhouse * Food * Pollut\* * Contamina\* * Nature * Rio Declaration * Principle 10 * Agenda 21 * Habitat * Mining * Typhoon * Drown | * Carbon dioxide * CO2 * Sea level\* * Erosion * Hazardous * Asbestos * PCB * Mercury * Acid * Extinct; extinction * Endangered * Ecosystem * Dam * Desertification * Flaring * Air |

10. Documents were obtained from the website of the Human Rights Committee.[[4]](#footnote-4) The review was conducted of English language documents.

## Overview of the Report

11. The remainder of the report presents the main findings of the research. Section II describes how the Committee has connected environmental harm to infringements of particular human rights. Section III discusses human rights obligations related to the environment. These obligations include procedural obligations, substantive obligations, and obligations relating to members of a specific group, namely indigenous peoples. Section IV addresses rights and obligations pertaining to various cross-cutting issues that cut across a range of possible rights and duties, including duties relating to transboundary and global environmental harm and duties relating to the environment owed to future generations. Section V makes some concluding observations.

# Human Rights Threatened by Environmental Harm

12. The text of the ICCPR does not explicitly recognize a human right to a healthy environment. Moreover, the Committee’s General Comments make no express references to environmental protection or pollution. Nonetheless, the Committee has addressed the impact of environmental harm on the enjoyment of a number of civil and political rights.

13. The Committee’s statements on human rights affected by environmental impacts have most frequently invoked the rights of minorities – and, particularly, indigenous peoples – protected by Article 27 of the ICCPR. Other rights addressed in this context include: the right of peoples to self-determination, protected by Article 1; the right to participate in public affairs under Article 25; the right to equality before the law and equal protection under Article 26; and the right to life, protected by Article 6. The Committee has also on occasion suggested that the right to a home free from arbitrary or unlawful interference (Article 17) may also be threatened by environmental harm.

## Rights of Minorities to Enjoy their Culture

14. Article 27 reads in its entirety:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

15. In its General Comment No. 23, on the rights of minorities under Article 27, the Human Rights Committee stated:

[O]ne or other aspect of the rights of individuals protected under [Article 27] - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.[[5]](#footnote-5)

The Committee continued:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.[[6]](#footnote-6)

16. The Committee has repeatedly been asked to address the issue of environmental degradation and exploitation in the context of rights of minorities under Article 27, including in its jurisprudence. In one early submission under the Optional Protocol, *E.P. et al. v. Columbia*, the submitters alleged that government policies and practices and government-encouraged developments were wreaking environmental havoc on the outlying islands on which the submitters lived, making farming impossible and depleting other traditional sources of sustenance such as fish and shellfish from mangrove swamps, and were also depriving them of fishing rights.[[7]](#footnote-7) The submitters were described as “native islanders” and “indigenous,” as well as “members of an overwhelmingly English-speaking Protestant population” inhabiting three islands over which predominantly Spanish-speaking Colombia had asserted sovereignty since 1819.[[8]](#footnote-8) The submitters invoked Article 27, contending that they had been dispossessed of their lands; that the Colombian government had encouraged massive development of the islands by outsiders that “has caused severe environmental damage,” including “such demands on the water table that an artificial drought has been created, making farming impossible, thus destroying one of the islanders’ traditional livelihoods”; that the government had also “permitted the destruction of mangrove swamps, formerly rich sources of lobster, fish, crabs and crayfish, by allowing electric power plants freely to dump hot, polluted water”; and that the Government had “granted fishing rights and other concessions to Honduras and other countries without regard to native interests, . . . depriv[ing] the islanders of another traditional means of survival.”[[9]](#footnote-9) The Committee did not address the allegations on their merits, however; instead, it found the communication inadmissible due to a failure to exhaust remedies.[[10]](#footnote-10)

17. In 1990, the Committee also adopted Views regarding the *Lubicon* *Lake Band v. Canada* communication.[[11]](#footnote-11) The Lubicon Lake Band, a Cree-speaking Native American group, has been continuously hunting, trapping and fishing in a large area of over 10,000 square kilometers in the northern part of the province of Alberta, Canada since “time immemorial.”[[12]](#footnote-12) The communication asserted various ways in which oil and gas development on lands traditionally used by the Band destroyed the environment (and the Lubicon Lake Band with it), and in the process violated a number of rights protected by the ICCPR.[[13]](#footnote-13) Although the Committee ultimately rejected attempts by the author of the communication to assert violations of most of the rights advanced,[[14]](#footnote-14) it agreed that Article 27 had been violated, stating, “Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue.”[[15]](#footnote-15)

18. In 1994, in *Ilmari* *Länsman, et al. v. Finland,* the Committee addressed a communication against Finland by a group of reindeer breeders of Sami origin who, invoking the Committee’s views in *Lubicon Lake Band*, asserted that government authorization of stone quarrying on a mountainside in Sami territory and used for their reindeer herding, as well as the associated road construction to remove the quarried stone, violated their rights under Article 27.[[16]](#footnote-16) Among other things, the authors contended that the quarrying and stone transportation would “disturb their reindeer herding activities and the complex system of reindeer fences determined by the natural environment.”[[17]](#footnote-17) The Committee concluded, however, that the authors’ rights to enjoy their own culture under Article 27 had not been and were not being violated.[[18]](#footnote-18) It emphasized that the authors had been consulted during the permitting proceedings, that their interests had been considered, and that reindeer herding did not appear to have been adversely affected by the quarrying to date.[[19]](#footnote-19) The authorities “endeavored to permit only quarrying which would minimize the impact on any reindeer herding activity . . . and on the environment;” it had also been agreed that the quarrying “should be carried out primarily outside the period used for reindeer pasturing in the area.”[[20]](#footnote-20) Responding to the authors’ concerns that the quarrying at issue was just the beginning of more expansive activities that could hurt the industry, the Committee noted that:

economic activities must, in order to comply with article 27, be carried out in a way that the authors continue to benefit from reindeer husbandry. . . . [I]f mining activities . . . were to be approved on a large scale and significantly expanded by those companies to which exploitation permits have been issued, then this may constitute a violation of the authors’ rights under article 27, in particular of their right to enjoy their own culture.[[21]](#footnote-21)

19. After *Ilmari Länsman*, the Committee was asked at least two more times to address whether natural resource extraction activities authorized by Finnish authorities were violating Article 27 by impairing the rights of people in the Sami ethnic group to enjoy the reindeer-herding aspects of their culture.[[22]](#footnote-22) Both communications raised questions about the impacts of logging. In its initial decision, the Committee acknowledged that the logging that the authorities had approved, “while resulting in additional work and extra expenses for the authors and other reindeer herdsmen,” was not extensive enough “to threaten the survival of reindeer husbandry.”

20. The communication in *Länsman II*, initially submitted in 2001, about four years after the decision in *Länsman I*, tested the meaning of the Committee’s observation in *Länsman I* that more extensive logging plans could end up violating Article 27 rights. Logging had indeed expanded, and the authors submitted evidence indicating that the expanded logging was adversely impacting the pasturing conditions for the reindeer, particularly affecting a species of lichen in the forests on which the reindeer traditionally feed, and the herd size in the affected area had to be limited due to reduced sustenance in winter pasturing areas.[[23]](#footnote-23) Nonetheless, the Committee concluded that there was no violation of Article 27. Noting that the State party and the authors had “divergent views” on the various developments concerning the logging, the Committee remarked that “numerous references” identified “other factors” besides pasturing issues “explaining why reindeer husbandry remains of low economic profitability,” and also observed that “despite difficulties the overall number of reindeers still remains relatively high.”[[24]](#footnote-24) It concluded that the effects of the challenged logging “have not been shown to be serious enough” to violate the authors’ Article 27 rights.[[25]](#footnote-25)

21. In 2000, the Committee decided *Mahuika v. New Zealand*,[[26]](#footnote-26) another communication by members of an indigenous population alleging that their rights to enjoy their culture under Article 27 had been violated, in this case by a state scheme governing fishing rights and practices that interfered with their traditional way of pursuing their livelihood.[[27]](#footnote-27) The eighteen authors, part of the Maori people, argued that the challenged New Zealand fisheries management arrangement seriously interfered with the way in which their traditional fishing was a fundamental aspect of Maori culture and tradition:

When areas of ancestral land and adjacent fisheries are abused through over-exploitation or pollution, the tangata whenua and their values are offended. The affront is felt by present-day kaitiaki (guardians) not just for themselves but for their tipuna in the past.

The Maori “taonga” in terms of fisheries has a depth and a breadth which goes beyond quantitative and material questions of catch volumes and cash incomes. It encompasses a deep sense of conservation and responsibility to the future, which colours their thinking, attitude and behaviour towards their fisheries.

The fisheries taonga includes connections between the individual and tribe, and fish and fishing grounds in the sense not just of tenure, or “belonging”, but also of personal or tribal identity, blood and genealogy, and of spirit. This means that a “hurt” to the environment or to the fisheries may be felt personally by a Maori person or tribe, and may hurt not only the physical being, but also the prestige, the emotions and the mana.

The fisheries taonga, like other taonga, is a manifestation of a complex Maori physicospiritual conception of life and life’s forces. It contains economic benefits, but it is also a giver of personal identity, a symbol of social stability, and a source of emotional and spiritual strength.[[28]](#footnote-28)

The Committee acknowledged that the State arrangements the authors complained of “limit the rights of the authors to enjoy their own culture.”[[29]](#footnote-29) However, it concluded that New Zealand had not violated Article 27, because, *inter alia*, the Maori continued to enjoy their fishing rights under the negotiated arrangement.[[30]](#footnote-30)

22. In *Ángela Poma Poma v. Peru*, the Committee addressed a communication against Peru alleging that Article 27 had been violated by extensive diversion of groundwater for urban use, making it impossible for the author of the communication and others in her community to carry on llama-raising in accordance with traditional customs.[[31]](#footnote-31) The author explained that the diversions, which had occurred over decades, had dried out elevated wetlands in an area of the Andean altiplano (4000 meters above sea level) of Peru, where the author and other descendants of the indigenous Aymara community, live, raise llamas and conduct other subsistence farming activities; the diversions had continued and expanded over the years, resulting in the drainage and degradation of 10,000 hectares of Aymara pastureland and the death of many livestock, destroying their traditional means of survival and leaving them in poverty.[[32]](#footnote-32) Efforts to stop the unlawful appropriation of water, although obtaining some support from prosecutors, met with inaction in the relevant courts and agencies.[[33]](#footnote-33) While the author contended that a number of rights under the ICCPR had been implicated, the Committee, as in its views in *Lubicon Lake Band*, focused on Article 27. [[34]](#footnote-34)

23. The Committee concluded that the author’s rights under Article 27 had indeed been violated, finding that:

. . . the author has been unable to continue benefiting from her traditional economic activity owing to the drying out of the land and loss of her livestock. The Committee therefore considers that the State’s action has substantively compromised the way of life and culture of the author, as a member of her community. The Committee concludes that the activities carried out by the State party violate the right of the author to enjoy her own culture together with the other members of her group, in accordance with article 27 of the Covenant.[[35]](#footnote-35)

24. The Committee has also noted in its Concluding Observations and Annual Reports its concerns and desire to receive further information about practices of and conditions in a number of State parties implicating rights under Article 27, including observations on Argentina, Australia, Columbia, Ecuador, Georgia, Guyana, Mexico, Nicaragua, Sweden and Venezuela. Although on its face the protection of Article 27 is not limited to indigenous peoples, in this context the Committee has most often focused on environmental degradation and exploitation in the context of its impacts on them rather than other ethnic, religious or linguistic minorities.

25. For example, regarding Colombia, with respect to Article 27 the Committee noted in 1992 that:

members of the Committee wished to receive information on … measures envisaged by the Special Commission on Amazon Indian Affairs to overcome the ecological deterioration of the area in the Amazon region …. In addition, they wished to know … whether Colombia had encountered any problems in reconciling development of its oil reserves with the maintenance of a balanced ecosystem.[[36]](#footnote-36)

26. In the same year, the Committee expressed a similar focus regarding Ecuador, stating that “members of the Committee wished to receive information on how the ecological deterioration of the area in the Amazon region was affecting the social and cultural organization of the indigenous communities living there and on any measures that had been taken to address that problem.”[[37]](#footnote-37)

27. In 1999, the Committee expressed concerns about the scope of rights available in Mexico for protection of indigenous people regarding their land, noting that Mexico’s “Constitution seems to protect only certain categories of rights with regard to indigenous lands and still leaves the indigenous populations exposed to a wide range of human rights violations.”[[38]](#footnote-38)

28. The Committee noted in 2000, regarding Guyana, that:

It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands, that in some cases insufficient land is demarcated to enable them to pursue their traditional economic activities and that there appears to be no effective means to enable members of Amerindian communities to enforce their rights under article 27.[[39]](#footnote-39)

29. Focusing on similar issues for indigenous peoples in Colombia, the Committee requested the following from the State party representative:

Rights of minorities (art. 27)

28. Please indicate what steps the State party has taken to protect the enjoyment of collective property rights in territories adjudged to indigenous and Afro-Colombian communities. In particular, what steps have been taken to facilitate the restitution of land to displaced communities and declare invalid the titles issued for parts of collective land sold by individuals? Please comment on the measures taken to prevent collusion between illegal armed groups and private actors with financial interests in exploiting natural resources and growing biofuels.[[40]](#footnote-40)

30. Similarly, the Committee recently observed regarding indigenous groups in Argentina:

The Committee is concerned by information that it has received which indicates that indigenous groups have been the target of violence and have been forcibly evicted from their ancestral lands in a number of provinces for reasons having to do with control over natural resources (articles 26 and 27 of the Covenant).[[41]](#footnote-41)

31. With respect to the indigenous Mayans in Belize, the Committee in 2012 framed the following concerns about decision-making and control of traditional land and natural resources as Article 27 issues:

Rights of persons belonging to minorities (art. 27)

28. Please provide information on the measures being taken to stop the parcelling of traditional land belonging to the Mayans and granting it to private buyers. Please respond to reports that the Government continues to grant natural resources concessions for oil, logging and hydro-electricity project in Toledo districts notwithstanding the decision of the Supreme Court of 28 June 2010. What measures are being taken to ensure that any such decisions are made after full and informed consultations with representatives of the Maya people?[[42]](#footnote-42)

32. The Committee has also focused on such concerns with respect to the Sami people. For example, in 2002 with respect to Sweden the Committee observed:

The Committee is concerned at the limited extent to which the Sami Parliament can have a significant role in the decision-making process on issues affecting the traditional lands and economic activities of the indigenous Sami people, such as projects in the fields of hydroelectricity, mining and forestry, as well as the privatization of land (arts. 1, 25 and 27 of the Covenant).[[43]](#footnote-43)

Seven years later, the Committee made similar observations regarding Sweden’s subsequent report:

While noting that the State party has delegated some responsibilities for reindeer husbandry to the Sami Parliament, the Committee remains concerned at the limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people. Furthermore, while noting the State party’s intention to address recommendations concerning Sami land and resource rights through a bill to be submitted to Parliament in March 2010, the Committee notes the limited progress achieved so far in respecting Sami rights as well as the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights (arts. 1, 25, and 27).[[44]](#footnote-44)

## Right of a People to Natural Wealth and Resources/Means of Subsistence

33. The Committee’s statements on human rights affected by environmental impacts have also referred to the right of self-determination, recognized in Article 1 of the ICCPR, which states in part:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

34. In General Comment No. 23, on the rights of minorities, the Committee cited its General Comment No. 12, on the right to self-determination, which states:

Paragraph 2 [of Article 1] affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”[[45]](#footnote-45)

35. The Committee has stated that it cannot consider claims of violation of Article 1(2) under the Optional Protocol to the Covenant. As the Committee stated in *Lubicon Lake Band*:

While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development and dispose of their natural wealth and resources, as stipulated in article 1 of the Covenant, the question whether the Lubicon Lake Band constitutes a "people" is not an issue for the Committee to address under the Optional Protocol to the Covenant. The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. There is, however, no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights.[[46]](#footnote-46)

36. The Committee made clear in *Lubicon Lake Band* that, although the Optional Protocol is not available to seek redress for violation of rights under Article 1(2), environmental degradation and exploitation nonetheless can implicate those rights. The Committee has expressed concern over such situations in a number of its Concluding Observations over the years.

37. For example, a member of the Committee recognized that Article 1(2) rights may be undermined by environmental degradation and exploitation in its 1983 Annual Report section considering the initial report of France:

One member recalled that the right of peoples freely to dispose of their natural resources implied the right to protect the latter from pollution and asked how France reconciled the right of the peoples of its territories in the South Pacific to protect themselves from atmospheric pollution with the carrying out of atomic weapon tests in the Murunoa Atoll.[[47]](#footnote-47)

38. More recently, the Committee’s discussion of rights under Article 1(2) often has been entwined with its discussion of rights under Article 27. For example, in the Committee’s observation regarding Australia from 2000, it refers to the State’s obligations under Article 1(2) in conjunction with alleged violations of Article 27:

The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use.[[48]](#footnote-48)

In 2002 and again in 2009, with respect to Sweden, the Committee did not differentiate its concerns regarding rights under Article 1, paragraph 2 from those under Article 27 with respect to impacts of various development issues on traditional lands and activities of the indigenous Sami people.[[49]](#footnote-49)

## Right to Life

39. The Committee has recognized that Article 6 of the ICCPR, protecting the right to life, may be implicated by environmental degradation and exploitation.[[50]](#footnote-50) Although the issue has been raised over the years in the Committee’s jurisprudence, the Committee has not concluded in response to a communication that environmental degradation or exploitation has resulted in a violation of Article 6. However, the Committee in its Concluding Observations has invoked Article 6 in connection with concerns about such issues.

40. An early Committee decision involving Article 6 was in *E.H.P. et al. v. Canada*, a communication brought in 1980 in which the author focused solely on the right to life under Article 6 in connection with extensive radioactive waste in and around the small town of Port Hope, Ontario.[[51]](#footnote-51) The waste was left over from the operations between 1945 and 1952 of a radium and uranium refinery owned by a government-affiliated corporation; although some waste had been identified, removed and relocated, a government body estimated that about 200,000 tons of radioactive waste remained in Port Hope and was being stored in “temporary” disposal sites in the town, near or directly beside residences.[[52]](#footnote-52) The author of the communication contended that the state of affairs threatened the life of present and future generations of Port Hope.[[53]](#footnote-53) Observing that “the present communication raises serious issues, with regard to the obligation of State parties to protect human life (Article 6(1)),” the Committee nonetheless concluded that the communication was inadmissible, explaining that the author had not exhausted all available domestic remedies as required under the Optional Protocol as a prerequisite for the Committee to consider the communication on the merits.[[54]](#footnote-54)

41. Nearly a decade later, in *Lubicon Lake Band v. Canada*, the author of the submission alleged that oil and gas development on and about lands traditionally used by the Band was causing environmental damage:

the State party, through actions affecting the Band’s livelihood, has created a situation which “led, indirectly if not directly, to the deaths of 21 persons and [is] threatening the lives of virtually every other member of the Lubicon community. Moreover, the ability of the community to [survive] is in serious doubt as the number of miscarriages and stillbirths has skyrocketed and the number of abnormal births . . . has gone from near zero to near 100 percent”.[[55]](#footnote-55)

The Committee summarily rejected the allegations, noting that “[s]weeping allegations concerning extremely serious breaches of other articles of the Covenant [including article 6], made after the communication was declared admissible, have not been substantiated to the extent that they would deserve serious consideration.”[[56]](#footnote-56)

42. In *Bordes and Temeharo v. France*, French citizens in French Polynesia submitted a communication in connection with French underground nuclear testing in the South Pacific.[[57]](#footnote-57) They claimed that their right to life under Article 6 was being violated as a result of the environmental damage being caused, asserting that:

numerous studies show the danger to life caused by nuclear tests, on account of the direct effects of the radiation on the health of individuals living in the test area, which manifests itself in an increased number of cancer and leukaemia cases, as well as genetical risks. Indirectly, human life is said to be threatened through the contamination of the food chain.[[58]](#footnote-58)

Contending that the “authorities have been unable to show that the underground nuclear tests do not constitute a danger to the health of the inhabitants of the South Pacific and to the environment,” the authors requested the Committee to ask France “not to carry out any nuclear tests until an independent international commission has found that the tests are indeed without risks and do not violate any of the rights protected under the Covenant.”[[59]](#footnote-59) The State party sharply contested the authors’ assertions of adverse environmental and health impacts.[[60]](#footnote-60) Ultimately, the Committee concluded that the authors had “not substantiated their claim” that the nuclear tests they were objecting to had resulted in a violation of their right to life, nor were they “under a real threat of violation,” which the Committee found to be essential in order for a person to be able to claim a rights violation.[[61]](#footnote-61) The Committee decided that this communication was inadmissible.[[62]](#footnote-62)

43. The authors of the submission in *Susila Malani Dahanayake* also invoked Article 6, claiming that:

the right to life guaranteed by Article 6 of the Covenant has been interpreted by other treaty bodies, and also by the Human Rights Committee, in a broad manner, and consequently claim a violation of their right to life, which includes a right to a healthy environment. To ascertain what would be the environmental effects of this project would require studies in regard to which the affected parties have a legal right to be heard before their homes and livelihood are radically affected. In the present case, no such studies, EIAs and hearings required by law were conducted.[[63]](#footnote-63)

The State party replied that “[i]t was not its intention to . . . interfere with [the authors’] right to live in a healthy environment,” and that in fact the road development project that had displaced the authors and was the subject of the communication “was intended to bring development to the area and to improve the quality of life of the inhabitants of the area, including the authors.”[[64]](#footnote-64) The Committee again concluded that the authors had not “sufficiently substantiated this claim, for purposes of admissibility.”[[65]](#footnote-65)

44. In another admissibility decision shortly thereafter, *André Brun v. France*, the author of the submission asserted that his rights under Article 6 had been violated by the State.[[66]](#footnote-66) In this case, the author destroyed a field of transgenic (genetically modified) maize, which he believed could pose long-term environmental and health risks.[[67]](#footnote-67) He claims that the State failed to recognize his promotion of a healthy environment and his contribution to the protection of the right to life by instead prosecuting him for his action.[[68]](#footnote-68) The Committee concluded that the State’s position on allowing the cultivation of transgenic plants in an open field did not present the author with “an actual violation or an imminent threat of violation of his right to life,” and dismissed the communication as inadmissible.[[69]](#footnote-69)

45. Notwithstanding that the Committee’s jurisprudence has not found a violation of Article 6 arising out of environmental degradation and exploitation, the Committee in its Concluding Observations has invoked Article 6 in connection with concerns about such issues. The references are generally brief, often requesting additional information, expressing concerns about pollution or another environmental issue, and asking whether the State party had some means of addressing the issue. For example, the Committee stated in its Concluding Observations in 1985 regarding Finland’s second periodic report that it would like to receive information regarding where the Committee requested clarification “of the measures that had been taken to prevent the dumping of toxic wastes.”[[70]](#footnote-70) Regarding the USSR, as well, the pattern was similar in the Committee’s Concluding Observations one year later, when it requested information on “what measures had been taken to protect the right to life against the risk of nuclear disaster and environmental pollution.”[[71]](#footnote-71)

46. In more recent Concluding Observations, although the format has changed, the Committee has continued to identify pollution issues as implicating the right to life under Article 6. For example, in its Concluding Observations regarding Israel’s third periodic report, the Committee stated that it is “further concerned at allegations of pollution by sewage water of Palestinian land, including from settlements (arts. 6 and 26).”[[72]](#footnote-72)

## Right to a Home and Family Free from Arbitrary or Unlawful Interference

47. Article 17 of the ICCPR states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.[[73]](#footnote-73)

48. The Committee has also considered claims related to environmental degradation and exploitation to affect Article 17. For example, in *Borde and Temeharo v. France*, Article 17 was one of two principal rights that the authors contended were being violated by underground nuclear testing in the South Pacific.[[74]](#footnote-74) The Committee stated:

As far as the authors’ claim under article 17 is concerned, counsel notes that the risks to the authors’ family life are real: thus, the danger that they loose [sic] a member of their family through cancer, leukaemia, ciguatera, etc., increases as long as measures are not taken to prevent the escape of radioactive material set free by the underground tests into the atmosphere and environment. This is said to constitute an unlawful interference with the authors’ right to their family life.[[75]](#footnote-75)

49. However, as noted earlier in this report, the Committee ruled the communication inadmissible, finding that the authors had not “substantiated their claim that the conduct of nuclear tests between September 1995 and the beginning of 1996” placed them “in a position in which they could justifiably claim to be victims whose right to . . . family life was then violated or was under a real threat of violation.”[[76]](#footnote-76) In at least three other communications submitted to the Committee, authors claimed that rights protected by Article 17 were violated by environmental degradation or exploitation.[[77]](#footnote-77) However, none of the authors prevailed on those claims either.[[78]](#footnote-78)

# Obligations on States Relating to the Environment

50. This section describes the obligations that, in the view of the Human Rights Committee, the ICCPR imposes on States relating to the environment.

## Procedural Obligations

### Duty to Provide for the Participation of Indigenous People and Minorities in Decision-Making Concerning Their Lands

51. The Committee has focused on procedural mechanisms as means to protect the enjoyment of Article 27 rights and, to some degree, other rights under the Covenant from infringement by environmental harm.

52. In the context of Article 27, concerning the right of minorities to enjoy their culture, the Committee’s General Comments directly support a duty on the State party to provide for the participation of the minority or indigenous group in decision-making processes affecting the environment to which enjoyment of the minority or indigenous culture may be tied. Paragraph 7 of General Comment No. 23 states:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. *The enjoyment of those rights may require* positive legal measures of protection and *measures to ensure the effective participation of members of minority communities in decisions which affect them*.[[79]](#footnote-79)

53. The Committee has often noted whether and how the affected indigenous groups or minorities have been able to be involved in the decision-making relating to the degradation/exploitation at issue. In its Concluding Observations, the Committee has in several instances encouraged greater involvement of the affected groups and peoples and expressed concern when State parties have limited or failed to broaden such involvement.

54. For example, in 2001, while noting the constitutional rights of indigenous communities in Venezuela with respect to exploitation of natural resources, the Committee expressed concern about whether such rights were being implemented as a practical matter:

The Committee commends the State party for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. It regrets, however, the lack of any information regarding the practical implementation of those constitutional provisions. The State party should provide information to the Committee on the implementation of those constitutional provisions with a view to complying with article 27.[[80]](#footnote-80)

55. The Committee’s 2009 Concluding Observations regarding Sweden similarly stated that “[w]hile noting that the State party has delegated some responsibilities for reindeer husbandry to the Sami Parliament, the Committee remains concerned at the limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people.” [[81]](#footnote-81) It recommended that the State party “should take further steps to involve the Sami in the decisions concerning the natural environment and necessary means of subsistence for the Sami people.”[[82]](#footnote-82)

56. Regarding Nicaragua, the Committee connected the enjoyment of Article 27 rights with consultation procedures for indigenous peoples during exploitation of natural resources on their lands, referring to the need to secure the free and informed prior consent of the indigenous people. Although not articulating specifically how the indigenous people’s enjoyment of their culture was being affected, the Committee expressed concern at the “absence of a consultation process to secure free, informed prior consent to the exploitation of natural resources on indigenous communities’ lands.”[[83]](#footnote-83) It recommended that the State party “[c]onduct consultations with indigenous peoples before granting licences for the economic exploitation of the lands where they live, and ensure that such exploitation in no circumstances infringes the rights acknowledged in the Covenant.”[[84]](#footnote-84)

57. The Committee’s attention to the role of process in evaluating whether rights have been violated by environmental degradation and exploitation can be seen in its jurisprudence as well. For example, in *Ilmari Länsman*, the Committee noted “in particular that the interests of the Muotkatunturi Herdsmens’ Committee and of the authors were considered during the proceedings leading to the delivery of the quarrying permit, that the authors wereconsulted during the proceedings,” in finding no violation of authors’ rights under Article 27 resulting from quarrying on/near traditional reindeer-herding lands.[[85]](#footnote-85) In *Apirana Mahuika*, the Committee also noted in finding no violation from impacts on national fisheries that the:

State party undertook a complicated process of consultation in order to secure broad Maori support to a nation-wide settlement and regulation of fishing activities. Maori communities and national Maori organizations were consulted and their proposals did affect the design of the arrangement. The Settlement was enacted only following the Maori representatives’ report that substantial Maori support for the Settlement existed.[[86]](#footnote-86)

### Duty to Ensure Effective Judicial Access and Remedy for Indigenous People and Minorities Affected by Exploitation of Natural Resources on Their Lands

58. The Committee has also invoked Article 2, paragraph 3(a) of the Covenant, which imposes on State parties a duty to provide an effective remedy when rights are violated,[[87]](#footnote-87) where such violations result from environmental degradation and exploitation. In its Views in *Ángela Poma Poma*, wherein the Committee found that the author’s rights under Article 27 had been violated by the sustained, long-term withdrawal of water from indigenous land, it required the State party, “in accordance with article 2, paragraph 3(a) of the Covenant,” to “provide the author an effective remedy and reparation measures that are commensurate with the harm sustained.”[[88]](#footnote-88) However, the precise content of the remedy is left undetermined.

59. In *Lubicon Lake Band,* the Committee’s Views conclude as follows:

Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue. The State party proposes to rectify the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant.[[89]](#footnote-89)

The content of the remedy as described is ambiguous, since earlier in its Views, the Committee describes several different settlement offers that had been made, the most recent the Views describe as still standing, involving the setting aside a 95 square mile reserve for the Band in the Province of Alberta, along with a “package” valued at $45 million (Canadian), and the right to continue to pursue in the courts of Canada outstanding claims for $167 million (Canadian) for losses allegedly suffered by the 500-member Band.[[90]](#footnote-90) The Views also point out the ongoing contention between the parties about the true content of the offer,[[91]](#footnote-91) making it unclear from the Views what the precise outcome is. In any event, a substantial transfer of land and other resources to the Band appears to have been part of the resolution, although the precise contours of the State party’s remedy is left unarticulated in the Views.

### Non-Discrimination in the Application of Environmental Policies

60. Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Human Rights Committee has indicated that the right to equality before the law and equal protection may be implicated by environmental degradation and exploitation.

61. Although the Committee’s jurisprudence generally has not addressed concerns about environmental degradation and exploitation as violations of equal protection rights, the Committee has expressed concern about how environmental degradation and exploitation affect Article 26 in several of its Concluding Observations. In some instances, its discussion of these equal protection issues is embedded in its discussion of Article 27 issues. For example, in its 2010 Concluding Observations regarding Argentina’s report, the Committee observed that it is “concerned by information that it has received which indicates that indigenous groups have been the target of violence and have been forcibly evicted from their ancestral lands in a number of provinces for reasons having to do with control over natural resources (articles 26 and 27 of the Covenant).”[[92]](#footnote-92)

62. The Committee noted in its 1999 Concluding Observations regarding Mexico, without specifically referencing any right under the Covenant in particular but calling out a lack of equal protection (i.e., Article 26) in the context of threats to the indigenous minority’s right to enjoy its lands and natural resources and culture (i.e., Article 27), that Mexico’s “Constitution seems to protect only certain categories of rights with regard to indigenous lands and still leaves the indigenous populations exposed to a wide range of human rights violations.”[[93]](#footnote-93)

63. Similarly, regarding Guyana’s report in 2000 the Committee stated, without expressly invoking Article 26, that:

It regrets the delay by the State party in amending the Amerindian Act, and is concerned that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law. It is particularly concerned that the right of Amerindians to enjoy their own culture is threatened by logging, mining and delays in the demarcation of their traditional lands….[[94]](#footnote-94)

64. Elsewhere, the Committee has expressed equal protection concerns under Article 26 regarding environmental degradation and exploitation without any reference, express or implied, to Article 27. Thus, in recent Concluding Observations on Bosnia-Herzegovina’s report, the Committee stated that it:

notes with concern that the State party intends to forcibly relocate the inhabitants of the Roma settlement at Butmir, purportedly because it lacks the necessary infrastructure to prevent pollution of the water supply, while no such relocation plan exists for the non-Roma families living across the street. It also notes with concern that the relocation plan reportedly lacks any detail as to the legal remedies and compensation available to the Roma families concerned (arts. 2, 17 and 26).[[95]](#footnote-95)

The Committee’s focus here, though, was not on equal protection rights being violated by unequally subjecting individuals to environmental degradation or exploitation; rather, it was on those rights being violated by selective *application of environmental protection laws* to them, in a way that indicated enforcement of those laws was a pretext for impermissible, ethnicity-based discrimination.

65. At least one Committee decision has reached the noteworthy conclusion that measures adopted by a State party, the purposes of which included *protection against* environmental exploitation, in fact violated equal protection rights under Article 26.[[96]](#footnote-96) It involved a challenge to fisheries management legislation adopted by Iceland;the authors of the communication objected to the management system, which they contended resulted in rights to the State party’s most important economic resource, its fisheries, being “donated to a privileged group.”[[97]](#footnote-97) After obtaining only very small fishing harvest rights under the system, the authors had to lease their fishing entitlements from others at “exorbitant prices, and eventually faced bankruptcy”; they then openly disregarded the system, notwithstanding warnings from the Ministry of Fisheries about the penalty provisions under the law, and they were then charged, tried, and ultimately convicted and sentenced to a fine and three months of imprisonment, with ruinous financial consequences as their company went bankrupt and one of the authors even lost his home.[[98]](#footnote-98) The Committee focused on the issue of whether Iceland’s system of allocation, which undeniably differentiated between different groups of fishers based on whether the fishers had engaged in fishing for quota-affected species during a three-year period from 1980 to 1983, was “based on reasonable and objective criteria.” Acknowledging that the “aim of this distinction . . ., namely the protection of its fish stocks which constitute a limited resource, is a legitimate one,” it concluded that the criteria employed were not reasonable and violated Article 26.[[99]](#footnote-99) Its finding was over six dissenting Committee members in three separate opinions, one noting that “there is no suggestion that the distinction among fishermen was based on ethnicity, religion, gender, or political affiliation, or any other characteristic identified in article 26 or otherwise protected by the Covenant.”[[100]](#footnote-100)

## Substantive Obligations

### Duty to Ensure Property Rights of Indigenous People and Minorities and to Protect Traditional Forms of Economy

66. The Committee has on various occasions recognized the need to adequately ensure access to land and traditional uses of such land for indigenous peoples to protect against environmental harm. The Committee has also recognized the need to protect traditional forms of economy, such as fishing and grazing rights.

67. For example, regarding Nicaragua, the Committee expressed concern that “more than six years after the ruling handed down by the Inter-American Court in the *Awas Tingni* case, the community still has no title of ownership, while the Awas Tingni region continues to be prey to illegal activity by outside settlers and loggers (arts. 26 and 27).”[[101]](#footnote-101)  In this regard, it recommended that the State party should, *inter alia*, “[c]ontinue and complete the process of delimiting, demarcating and granting title to the lands of the Awas Tingni community, prevent and check illegal activity by outsiders on those lands, and investigate and punish those responsible for such activity.”[[102]](#footnote-102)

68. The Committee also expressed in 2000 concerns about Australia’s level of protection for its indigenous inhabitants and their Article 27 rights with respect to traditional uses of their lands:

508. The Committee is concerned, despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (Mabo, 1992; Wik, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, that in many areas native title rights and interests remain unresolved and that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands.

509. The Committee recommends that the State party take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. The high level of exclusion and poverty facing indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

510. The Committee expresses its concern that securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities, which must be protected under article 27, are not always a major factor in determining land use.

511. The Committee recommends that in the finalization of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984), the State party should give sufficient weight to the values described above.[[103]](#footnote-103)

69. In 1999, the Committee expressed concerns about the scope of rights available in Mexico for protection of indigenous people regarding their land and recommended that:

The State party should take all necessary measures to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources.[[104]](#footnote-104)

70. Similarly, regarding indigenous groups in Argentina, the Committee recently observed:

The Committee is concerned by information that it has received which indicates that indigenous groups have been the target of violence and have been forcibly evicted from their ancestral lands in a number of provinces for reasons having to do with control over natural resources (articles 26 and 27 of the Covenant).

The State party should adopt such measures as are necessary to put an end to evictions and safeguard the communal property of indigenous peoples as appropriate. In this connection, the State party should redouble its efforts to implement the programme providing for a legal cadastral survey of indigenous community property.[[105]](#footnote-105)

71. In *Mahuika v. New Zealand*, the Committee acknowledged that the State arrangements with respect to the Maori’s fishing rights the authors complained of limited their rights to “enjoy their own culture.”[[106]](#footnote-106) But it concluded that New Zealand had not violated Article 27, noting the effects of a settlement between the government and the Maori that resulted in the protection of Maori fishing rights:

[B]efore the negotiations which led to the Settlement the Courts had ruled earlier that the Quota Management System was in possible infringement of Maori rights because in practice Maori had no part in it and were thus deprived of their fisheries. With the Settlement, Maori were given access to a great percentage of quota, and thus effective possession of fisheries was returned to them. In regard to commercial fisheries, the effect of the Settlement was that Maori authority and traditional methods of control as recognised in the Treaty were replaced by a new control structure, in an entity in which Maori share not only the role of safeguarding their interests in fisheries but also the effective control. In regard to non-commercial fisheries, the Crown obligations under the Treaty of Waitangi continue, and regulations are made recognising and providing for customary food gathering.[[107]](#footnote-107)

### Duty to Ensure That Environmental Legislation Balances the Interest of Minorities and Indigenous Peoples in Their Traditional Activities

72. It is worth noting that in at least one communication, an author has invoked Article 27 in an attempt to invalidate a State party’s legislation to *protect* resources from environmental degradation and exploitation. In *Ivan Kitok v. Sweden*, the author, of Sami ethnic origin, complained that he had lost his right to reindeer breeding and right to land and water in a Sami village, where the system in place removed from the rolls those who engaged in a profession other than reindeer breeding for a period of more than three years.[[108]](#footnote-108) The State party explained that the Reindeer Husbandry Act at issue was intended to protect the ongoing viability of the Sami culture itself and the reindeer breeding that was part of it, and that unrestricted exercise of such rights would run the risk of endangering the practice of reindeer husbandry, in view of the limited pasture lands available.[[109]](#footnote-109) The Committee concluded that the ecological and other reasons advanced by the State party were “reasonable and consistent with article 27 of the Covenant.”[[110]](#footnote-110) Although it expressed “grave doubts” as to the compatibility with Article 27 of certain aspects of the Reindeer Husbandry Act, precluding those who are Sami from participating in the life of the community, it concluded that the impact of the legislation on balance did have a “reasonable and objective justification” and was “necessary for the continued viability and welfare of the minority as a whole.”[[111]](#footnote-111) This was influenced at least in part by the fact that the author “is permitted, albeit not as of right, to graze and farm his reindeer, to hunt and to fish.”[[112]](#footnote-112)

### Duty to Strike a Balance Between Economic Activities and the Interest of Indigenous People and Minorities

73. Although the Committee found no violations in the series of Views addressing communications by Sami herdsmen in Finland over two decades of Article 27 violations allegations, it did amplify its views on a State party’s duties with respect to a minority’s rights to enjoy its culture. The Committee does not see the State as being obligated to provide an environment in which any interference with the minority’s cultural practices is strictly forbidden. Rather, the Committee repeatedly calls for striking a balance, which may involve some friction between the activities of the broader society as permitted by the State and the continued exercise of the minority of its cultural practices, especially in their less diluted forms. As the Committee stated in *Ilmari Länsman:*

Article 27 requires that a member of a minority shall not be denied his right to enjoy his culture. Thus, measures whose impact amount to a denial of the right will not be compatible with the obligations under article 27. However, measures that have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a denial of the right under article 27.[[113]](#footnote-113)

Accordingly, the State party’s permitting quarrying on a mountainside near indigenous lands used for traditional cultural activities of the Sami people such as reindeer herding is permissible; but the Committee also warned that if the mining in the area were “significantly expanded,” it could constitute a violation.[[114]](#footnote-114) Accordingly, the Committee asserted, “The State party is under a duty to bear this in mind when either extending existing contracts or granting new ones.”[[115]](#footnote-115)

74. In other decisions as well, the Committee warns the State party, in effect, to be mindful of the competing rights under Article 27 of the indigenous Sami people and to remember that the State party can go too far in allowing competing activities to intrude. In *Jouni Länsman I,* the Committee stressed that a reindeer herding association to which the authors belonged had been consulted in connection with the logging plans and that the association itself had not reacted negatively to the logging, although the authors did; and it noted approvingly that “the State party’s authorities *did* go through the process of weighing the authors’ interests and the general economic interests in the area specified in the complaint when deciding on the most appropriate measures of forestry management. . . .”[[116]](#footnote-116) The Committee acknowledged that the logging that the authorities had approved, “while resulting in additional work and extra expenses for the authors and other reindeer herdsmen, does not appear to threaten the survival of reindeer husbandry.”[[117]](#footnote-117) The Committee went on to state that:

iflogging plans were to be approved on a scale larger than that already agreed to for future years in the area in question or if it could be shown that the effects of the logging already planned were more serious than can be foreseen at present, then it may have to be considered whether it would constitute a violation of the authors’ right to enjoy their own culture within the meaning of article 27. . . . [T]he Committee deems it important to point out that the State party must bear in mind when taking steps affecting the rights under article 27, that though different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.[[118]](#footnote-118)

75. In *Poma Poma v. Peru*, the Committee again invoked a balancing test to evaluate the allegations of harm:

The Committee recognizes that a State may legitimately take steps to promote its economic development. Nevertheless, it recalls that economic development may not undermine the rights protected by article 27. Thus the leeway the State has in this area should be commensurate with the obligations it must assume under article 27. The Committee also points out that measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with article 27, whereas measures with only a limited impact on the way of life and livelihood of persons belonging to that community would not necessarily amount to a denial of the rights under article 27.[[119]](#footnote-119)

76. The Committee concluded that the author’s rights under Article 27 had indeed been violated, finding that:

the author has been unable to continue benefiting from her traditional economic activity owing to the drying out of the land and loss of her livestock. The Committee therefore considers that the State’s action has substantively compromised the way of life and culture of the author, as a member of her community. The Committee concludes that the activities carried out by the State party violate the right of the author to enjoy her own culture together with the other members of her group, in accordance with article 27 of the Covenant. [[120]](#footnote-120)

### Duty to Minimize Environmental Impacts from Economic and Other Activities on Indigenous People and Minorities

77. In *Ilmari* *Länsman*, the Committee found that the government’s authorization of stone quarrying on a Sami territory mountainside used for reindeer herding, and the associated road construction to remove the quarried stone, did not violate their rights under Article 27. The Committee found that economic activity was carried out in a limited manner so that the Sami continued to benefit from their reindeer herding. According to the Committee, the authorities had “endeavoured to permit only quarrying which would minimize the impact on any reindeer herding activity . . . and on the environment;” it had also been agreed that the quarrying “should be carried out primarily outside the period used for reindeer pasturing in the area.”[[121]](#footnote-121) Responding to the authors’ concerns that the quarrying at issue was just the beginning of more expansive activities that could hurt the industry, the Committee noted that:

economic activities must, in order to comply with article 27, be carried out in a way that the authors continue to benefit from reindeer husbandry. . . . [I]f mining activities . . . were to be approved on a large scale and significantly expanded by those companies to which exploitation permits have been issued, then this may constitute a violation of the authors’ rights under article 27, in particular of their right to enjoy their own culture.[[122]](#footnote-122)

78. The Committee’s Concluding Observations on State party reports provide additional clarification with respect to the duties of State parties arising out of relevant ICCPR rights concerning environmental degradation and exploitation. Regarding minorities’ rights under Article 27 to enjoy their culture and the right to life, as well as a people’s right to their natural wealth and resources and means of subsistence addressed in Article 1, paragraph 2, the Concluding Observations generally articulate practices that the Committee believes should be changed to reduce the adverse impacts on the affected right (or furthered, to better protect the right), or reflect Committee concerns about negative developments or praise and encouragement for positive ones. While they do not typically invoke mandatory language, they do reflect an understanding by the Committee that the State party has a duty to promote environmental and ecological health and to modulate the adverse impacts of various economic activities on the environment that undermine the ability of minorities (most typically, indigenous minorities) to enjoy their culture, and to protect a people’s control of their natural wealth and resources and their means of subsistence from environmental developments.

79. For example, in its Concluding Observations regarding Ecuador, the Committee recognized the steps that the State party had undertaken to reduce environmental impacts in the Amazon regions:

[M]embers of the Committee wished to receive information on how the ecological deterioration of the area in the Amazon region was affecting the social and cultural organization of the indigenous communities living there and on any measures that had been taken to address that problem. … The ecological deterioration of the region was due, in particular, to the deforestation attendant on the spontaneous settlement that had taken place after roads had been built through the area; oil production; and the granting of agricultural concessions to plant crops such as the oil palm. In an attempt to curb spontaneous settlement, the Government had amended the agrarian reform measures that had conferred ownership of land on those clearing it of trees. … The indigenous peoples had a very important role to play in the protection of the area and, therefore, over 1 million hectares had been granted to them. The Government had also set up new stringent standards for oil companies working in the Amazon region and a bill had been drawn up to establish a fund for conservation of the ecology of the Amazon region. However, enormous problems still remained to be addressed and continuous vigilance was necessary.[[123]](#footnote-123)

80. In considering France’s report in 1993, the Committee inquired about what steps the State party was undertaking to protect the right of the peoples from pollution in the South Pacific. One member of the Committee:

recalled that the right of peoples freely to dispose of their natural resources implied the right to protect the latter from pollution and asked how France reconciled the right of the peoples of its territories in the South Pacific to protect themselves from atmospheric pollution with the carrying out of atomic weapon tests in the Murunoa Atoll.[[124]](#footnote-124)

81. Regarding Colombia, with respect to Article 27, the Committee noted in 1992 that:

members of the Committee wished to receive information on … measures envisaged by the Special Commission on Amazon Indian Affairs to overcome the ecological deterioration of the area in the Amazon region …. In addition, they wished to know … whether Colombia had encountered any problems in reconciling development of its oil reserves with the maintenance of a balanced ecosystem.[[125]](#footnote-125)

82. In Concluding Observations on Norway and Italy, the Committee inquired as to what measures the State party had undertaken to prevent the dumping of toxic waste.[[126]](#footnote-126) In other Concluding Observations, the Committee inquired as to what measures were being taken to curb or address pollution.[[127]](#footnote-127)

# Cross-Cutting Issues

## Obligations relating to Non-State Actors

83. The sources reviewed identified no instances in which the Committee addressed the issue of human rights duties regarding environmental degradation or exploitation focused on non-State actors. Non-state actors were not the subjects of the Committee’s focus in the sources reviewed; rather, such entities appeared in the sources (occasionally) as an un-named current or prospective holder of some permit or concession from the State party, the granting of which by the State being the focus of the objection.[[128]](#footnote-128)

## Obligations relating to Future Generations

84. The sources reviewed identified no instances in which the Committee endorsed or considered whether to articulate any human rights duties related to the environment owed to future generations. In at least one source reviewed, though, the issue of harm to future generations that could result from the environmental degradation was raised before the Committee. The author in *E.H.P.* purported to submit her communication not only on her own behalf and on behalf of 129 fellow residents who had specifically authorized her to act for them, but also on behalf of “present and future generations” of the town in which she lived, Port Hope, Canada (where large volumes of radioactive waste remained throughout the town, “near or directly beside residences,” from uranium refining operations that had ended decades earlier).[[129]](#footnote-129) The State party, however, objected to the communication on behalf of future generations, arguing that the Optional Protocol does not confer any right to submit such a communication.[[130]](#footnote-130) The Committee ultimately side-stepped the issue, concluding that a resolution of it was unnecessary in light of the many others on whose behalf the author undisputedly was entitled to act.[[131]](#footnote-131) The Committee chose to “treat the author’s reference to ‘future generations’ as an expression of concern purporting to put into due perspective the importance of the matter raised in the communication.”[[132]](#footnote-132)

# Conclusions

85. Although the ICCPR contains a number of rights that may be implicated by environmental degradation or exploitation (including the right of minorities to enjoy their culture (Article 27), the right of a people to natural wealth and resources/means of subsistence (Article 1, paragraph 2), the right to equality before the law and equal protection (Article 26), the right to life (Article 6, paragraph 1), the right to participate in public affairs (Article 25), the right to a home and family free from arbitrary/unlawful interference (Article 17), and the right of family to protection by society and the state (Article 23, paragraph 1)), it is the right of minorities to enjoy their culture that has been central to the most detailed Committee discussion of duties under the ICCPR regarding environmental degradation and exploitation. Nevertheless, in many of its Concluding Observations the Committee has raised concerns about environmental degradation and exploitation under the rubric of other ICCPR rights, including in particular the right to life.

1. International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 16 December 1966 (entered into force 23 March 1976). The First Optional Protocol of the ICCPR was adopted and entered into force on the same days as the treaty itself. As of July 2013, the First Optional Protocol had 114 State parties and a further 35 signatories. The Second Optional Protocol concerns the abolition of the death penalty and has no bearing on this report. *See* Second Optional Protocol to the International Covenant on Civil and Political Rights, G. A. Res. 44/128, U.N. Doc. A/44/49, 15 December 1989 (entered into force 11July 1991). [↑](#footnote-ref-1)
2. *See* ICCPR, note 1 *supra,* art. 28 (“There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee).”); Part IV (elaborating the duties of the Committee including the receipt and consideration of reports, the hearing of inter-state complaints, and submitting an annual report on its activities). The First Optional Protocol to the ICCPR creates a mechanism for the Committee to hear individual complaints. [↑](#footnote-ref-2)
3. Where material reviewed referred to earlier documents that appear to fall within the scope of this report, those earlier documents were also reviewed and, if within the scope, are included. For example, General Comment No. 23 refers to views of the Committee in *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*, 26 March 1990, Communication No. 167/1984. *See* *General Comment No. 23 on the rights of minorities (art. 27)*, 26 April 1994, U.N. Doc. CCPR/C/21/Rev.1/Add.5, notes 1 and 5. That communication alleged human rights violations by the Government of Canada due to the environmental impacts of government-sanctioned oil and gas development in the traditional hunting and trapping territory of the affected Native American band located in a remote northern area of the province of Alberta. [↑](#footnote-ref-3)
4. *See* Website of the Human Rights Committee, http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx. Additional documents related to Jurisprudence are located at <http://tb.ohchr.org/default.aspx?DOCTYPE=26&CONVTYPE=12>. [↑](#footnote-ref-4)
5. *General Comment No. 23*, note 3 *supra,* ¶ 3.2. [↑](#footnote-ref-5)
6. *Ibid.* ¶ 7. [↑](#footnote-ref-6)
7. *E.P., et al. v. Colombia*, 25 July 1990, U.N. Doc. CCPR/C/39/D/318/1988, ¶¶ 2.3- 2.4. [↑](#footnote-ref-7)
8. *See ibid.* ¶¶ 1-2.2. [↑](#footnote-ref-8)
9. *See ibid.* ¶¶ 2.2-2.4. [↑](#footnote-ref-9)
10. *See ibid.* ¶¶ 1, 8.3. [↑](#footnote-ref-10)
11. *See* *Lubicon Lake Band*, note 3 *supra*. [↑](#footnote-ref-11)
12. *See ibid.* ¶ 2.2. [↑](#footnote-ref-12)
13. *E.g., ibid.* ¶¶ 2.3, 16.1-16.4, 23.2, 27.1, 27.3-27.6; *see also ibid.* ¶ 29.11 (impact of pulp mill near Band’s traditional territory). [↑](#footnote-ref-13)
14. *Ibid.* ¶ 32.1-32.3. Rights allegedly violated included the right to life (Article 6), equal protection rights (Articles 14(1) and 26), and family protection rights (Articles 17 and 23(1). [↑](#footnote-ref-14)
15. *Ibid.* ¶ 33. [↑](#footnote-ref-15)
16. *Ilmari Länsman, et al. v. Finland*, 26 October 1994, U.N. Doc. CCPR/C/52/D/511/1992. [↑](#footnote-ref-16)
17. *Ibid.* ¶ 2.5. [↑](#footnote-ref-17)
18. *Ibid.* ¶ 10. [↑](#footnote-ref-18)
19. *Ibid.* ¶ 9.6. [↑](#footnote-ref-19)
20. *Ibid.* ¶ 9.7. [↑](#footnote-ref-20)
21. *Ibid.* ¶ 9.8. [↑](#footnote-ref-21)
22. *Jouni Länsman, et al. v. Finland*, 30 October 1996, U.N. Doc. CCPR/C/58/D/671/1995 (“*Jouni Länsman I*”); and *Jouni Länsman, et al. v. Finland*, 17 March 2005, U.N. Doc. CCPR/C/83/D/1023/2001 (“*Jouni Länsman II*”). [↑](#footnote-ref-22)
23. *Jouni Länsman II*, note 22 *supra*, ¶¶ 3.1-3.5. [↑](#footnote-ref-23)
24. *Ibid.* ¶ 10.3. [↑](#footnote-ref-24)
25. *Ibid.* [↑](#footnote-ref-25)
26. *Apirana Mahuika, et al. v. New Zealand*, 27 October 2000, U.N. Doc. CCPR/C/70/D/547/1993. [↑](#footnote-ref-26)
27. *Ibid.* ¶ 6.2. [↑](#footnote-ref-27)
28. *Ibid.* ¶ 8.2. [↑](#footnote-ref-28)
29. *Ibid.* ¶ 9.5. [↑](#footnote-ref-29)
30. *Ibid.* ¶ 9.7. [↑](#footnote-ref-30)
31. *Ángela Poma Poma v. Peru*, 27 March 2009, U.N. Doc. CCPR/C/95/D/1457/2006. [↑](#footnote-ref-31)
32. *Ibid.* ¶¶ 2.1-2.3, 3.1. [↑](#footnote-ref-32)
33. *Ibid.* ¶¶ 2.5-2.13. [↑](#footnote-ref-33)
34. *Ibid.* ¶¶ 3.1-3.3, 6.3-6.5, 7.1. [↑](#footnote-ref-34)
35. *Ibid.* ¶¶ 7.7, 8. The Committee also concluded that, in conjunction with the violation of Article 27, the author had also suffered a violation of Article 2, paragraph 3(a), which requires provision of an effective remedy for violations of rights under the ICCPR where the violations are perpetrated by those acting in official capacity. *Ibid.* ¶ 8. [↑](#footnote-ref-35)
36. *See Report of the Human Rights Committee for the Forty-seventh session,* *Consideration of reports submitted by State parties under Article 40 of the Covenant: Colombia*, 9 October 1992, U.N. Doc. CCPR/A/47/40, ¶¶ 378-379. [↑](#footnote-ref-36)
37. *See Report of the Human Rights Committee for the Forty-seventh session*, *Consideration of reports submitted by State parties under Article 40 of the Covenant: Ecuador*, 9 October 1992, U.N. Doc. A/47/40, ¶¶ 257-258. [↑](#footnote-ref-37)
38. *Concluding observations of the Human Rights Committee for the Sixty-sixth session:* *Mexico*, 27 July 1999, U.N. Doc. CCPR/C/79/Add. 109, ¶ 19. [↑](#footnote-ref-38)
39. *Concluding observations of the Human Rights Committee: Guyana*, U.N. Doc. CCPR/C/79/Add.121, 24 and 27 March 2000, ¶ 21. [↑](#footnote-ref-39)
40. *List of Issues to be Taken Up in Connection with the Consideration of the Sixth Report of Colombia*, 11 November 2009, U.N. Doc. CCPR/C/COL/Q/6, ¶ 28. [↑](#footnote-ref-40)
41. *Concluding observations by the Human Rights Committee for the Ninety-eighth session:* *Argentina*, 31 March 2010, U.N. Doc. CCPR/C/ARG/CO/4, ¶ 25. [↑](#footnote-ref-41)
42. *List of Issues Prepared in the Absence of the Initial Report of Belize*, 23 November 2012, U.N. Doc. CCPR/C/BLZ/Q/1, ¶ 28. [↑](#footnote-ref-42)
43. *Concluding observations by the Human Rights Committee for the Seventy-fourth session:* *Sweden*, 24 April 2002, U.N. Doc. CCPR/CO/74/SWE, ¶ 15. [↑](#footnote-ref-43)
44. *Concluding observations of the Human Rights Committee for the Ninety-fifth session:* *Sweden*, 7 May 2009, U.N. Doc. CCPR/C/SWE/CO/6, ¶ 20. [↑](#footnote-ref-44)
45. *General Comment No. 12: The right to self-determination of peoples (Art. 1)*, 13 March 1984, U.N. Doc. HRI/GEN/1/Rev.1, ¶ 5. [↑](#footnote-ref-45)
46. *Lubicon Lake Band*, note 3, *supra*, at ¶ 32.1. *See also Ángela Poma Poma*, note 31, *supra*, ¶ 6.3; *Apirana Mahuika*, note 26 *supra*, ¶ 9.2; and *E.P*., note 7 *supra*, ¶ 9.2. [↑](#footnote-ref-46)
47. *See Report of the Human Rights Committee for the Thirty-eighth session*, *Consideration of reports submitted by State parties under article 40 of the Covenant: France*, 12, 13, 15 July 1983, U.N. Doc. CCPR/A/38/40 (1983), ¶ 294. [↑](#footnote-ref-47)
48. *See Report of the Human Rights Committee for the Fifty-fifth session,* *Consideration of reports submitted by State parties under article 40 of the Covenant: Australia*, 10 October 2000, U.N. Doc. A/55/40 (Vol. I), ¶ 510. [↑](#footnote-ref-48)
49. *See* notes 43 & 44 *supra*. [↑](#footnote-ref-49)
50. Paragraph 1 of Article 6 states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The remaining five paragraphs of Article 6 address issues regarding the death sentence, genocide, and the abolition of capital punishment. [↑](#footnote-ref-50)
51. *E.H.P. v. Canada*, included in Selected Decisions of the Human Rights Committee under the Optional Protocol, 27 October 1982, U.N. Doc. CCPR/C/OP/2, ¶¶ 1.1-1.2. [↑](#footnote-ref-51)
52. *Ibid.* ¶ 1.2. [↑](#footnote-ref-52)
53. *Ibid.* ¶ 1.3. [↑](#footnote-ref-53)
54. *Ibid.* ¶ 8. [↑](#footnote-ref-54)
55. *See* *Lubicon Lake Band*, note 3 *supra*, ¶ 16.2. [↑](#footnote-ref-55)
56. *Ibid.* ¶ 32.2. [↑](#footnote-ref-56)
57. *Bordes and Temeharo v. France*, included in Selected Decisions of the Human Rights Committee under the Optional Protocol, 22 July 1996, U.N. Doc. CCPR/C/57/D/645/1995. [↑](#footnote-ref-57)
58. *Ibid.* ¶¶ 1, 2.2. [↑](#footnote-ref-58)
59. *Ibid.* ¶ 2.3. [↑](#footnote-ref-59)
60. *Ibid.* ¶¶ 3.3-3.5. [↑](#footnote-ref-60)
61. *Ibid.* ¶¶ 5.4-5.5. [↑](#footnote-ref-61)
62. *Ibid.* ¶ 6. [↑](#footnote-ref-62)
63. *Susila Malani Dahanayake and 41 other Sri Lankan citizens v. Sri Lanka*, 25 July 2006, U.N. Doc. CCPR/C/87/D/1331/2004, ¶ 3.2. [↑](#footnote-ref-63)
64. *Ibid.*  ¶ 4.7. [↑](#footnote-ref-64)
65. *Ibid.* ¶ 6.4. [↑](#footnote-ref-65)
66. *André Brun v. France*, declared inadmissible 18 October 2006, U.N. Doc. CCPR/C/88/D/1453/2006, ¶ 5.6. [↑](#footnote-ref-66)
67. *Ibid.* [↑](#footnote-ref-67)
68. *Ibid.* [↑](#footnote-ref-68)
69. *Ibid.* ¶¶ 6.3, 7. [↑](#footnote-ref-69)
70. *See Report of the Human Rights Committee for the Forty-Fourth session, Consideration of reports submitted by State parties under article 40 of the Covenant: Italy*, 29 September 1989, U.N. Doc. A/44/40, ¶ 562. *See also* *Report of the Human Rights Committee for the Forty-Fourth session, Consideration of reports submitted by State parties under article 40 of the Covenant: Norway*, 29 September 1989, U.N. Doc. A/44/40, ¶ 65 (“It was also asked whether Norway intended to take measures to regulate the transport and dumping of toxic waste.”); *Report of the Human Rights Committee for the Forty-Sixth session, Consideration of reports submitted by State parties under article 40 of the Covenant: Ukrainian Soviet Socialist Republic,* 10 October 1991, U.N. Doc. A/46/40, ¶ 199(“what measures had been taken to protect the right to life against the risk of nuclear disaster and environmental pollution, particularly subsequent to the accident at Chernobyl”); *Report of the Human Rights Committee for the Forty-Seventh session,* *Consideration of reports submitted by State parties under article 40 of the Covenant: Poland*, 9 October 1992, U.N. Doc. A/47/40, ¶ 143 (“what measures had been taken against environmental pollution to protect the right to life”); *Report of the Human Rights Committee for the Forty-Seventh session,* *Consideration of reports submitted by State parties under article 40 of the Covenant: Austria*, 9 October 1992, U.N. Doc. A/47/40, ¶ 94 (“whether any steps had been taken to provide the population with a healthy environment by curbing pollution”). [↑](#footnote-ref-70)
71. *See Report of the Human Rights Committee for the Forty-Fifth session, Consideration of reports submitted by State parties under article 40 of the Covenant: Union of Soviet Socialist Republics*, 4 October 1990, U.N. Doc. A/45/40, ¶ 92. [↑](#footnote-ref-71)
72. *Concluding observations of the Human Rights Committee for the Ninety-ninth session,* *Israel*, 3 September 2010, U.N. Doc. CCPR/C/ISR/CO/3, ¶ 18. The parenthetical reference to Article 26 (concerning equal protection) appears to relate to the Committee’s concerns regarding “water shortages disproportionately affecting the Palestinian population of the West Bank” due to various Israeli government policies, which are noted immediately before the sentence quoted in the text above regarding pollution by sewage water, rather than to the sentence quoted in the text; but the paragraph is not clear in this regard. *See ibid.* [↑](#footnote-ref-72)
73. ICCPR, note 1 *supra,* art. 17(1). [↑](#footnote-ref-73)
74. *See Borde and Temeharo*, note 57 *supra*, ¶¶ 1, 5.3. [↑](#footnote-ref-74)
75. *Ibid.* ¶ 4.8. [↑](#footnote-ref-75)
76. *Ibid.* ¶¶ 5.5. [↑](#footnote-ref-76)
77. *See Lubicon Lake Band*, note 3 *supra*, ¶¶ 16.4, 27.4, 27.6; *André Brun, supra* note 66, ¶¶ 1.1, 3.1; *Ángela Poma Poma*, note 31 *supra*, ¶¶ 1, 3.3. [↑](#footnote-ref-77)
78. *Lubicon Lake Band*, note 3 *supra*, ¶ 32.2 (finding that “the allegations concerning breaches of article 17. . . are similarly of a sweeping nature and will not be taken into account except in so far as they may be considered under the allegations which, generally, raise issues under article 27”); *André Brun*, *supra* note 66, ¶ 7 (finding claim inadmissible); *Ángela Poma Poma*, note 31 *supra*, ¶¶ 6.3, 7.9 (finding “the facts as presented by the author raise issues that are related to article 27”; and, in light of finding violations of article 27, “Committee does not consider it necessary to deal with the author’s complaint of a violation of article 17”). [↑](#footnote-ref-78)
79. *See* *General Comment No. 23*, note 3 *supra,* ¶ 7 (emphasis added) (internal citations omitted). [↑](#footnote-ref-79)
80. *Concluding observations by the Human Rights Committee for the Seventy-first session:* *Venezuela*, 26 April 2001, U.N. Doc. CCPR/CO/71/VEN, ¶ 28. [↑](#footnote-ref-80)
81. *Concluding observations: Sweden*, note 43 *supra,* ¶ 20. [↑](#footnote-ref-81)
82. *Ibid*. *See also Report of the Human Rights Committee for the Fifty-fifth session, Consideration of reports submitted by State parties under article 40 of the Covenant: Guyana*, 10 October 2000, U.N. Doc. A/55/40 (Vol. I), ¶¶ 379-380 (“The State party should ensure that there are effective measures of protection to enable members of indigenous Amerindian communities to participate in decisions which affect them and to enforce their right to enjoy their rights under the Covenant.”); *Consideration of reports submitted by State parties: Australia*, note 48 *supra*, ¶¶ 507-11 (“The Committee is concerned . . . that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and affects their interests in native title lands, particularly pastoral lands” and “[t]he State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).”); *List of Issues: Belize*, note 42 *supra*, ¶ 28 (“What measures are being taken to ensure any such [natural resource-affecting decisions] are made after full and informed consultations with representatives of the Maya people?”). [↑](#footnote-ref-82)
83. *Concluding observations of the Human Rights Committee for the Ninety-fourth session:* *Nicaragua*, 12 December 2008, U.N. Doc. CCPR/C/NIC/CO/3, ¶ 21. [↑](#footnote-ref-83)
84. *Ibid*. [↑](#footnote-ref-84)
85. *Ilmari Länsman*, note 16 *supra*, ¶9.6; *see also Jouni Länsman I*, note 22 *supra*, ¶ 10.5 (stating that “[i]t is uncontested that the Muotkatunturi Herdsmen’s Committee, to which the authors belong, *was* consulted in the process of drawing up the logging plans and in the consultation, the Muotkatunturi Herdsmen’s Committee did not react negatively to the plans for logging,” in finding no violation of authors’ rights under Article 27 resulting from logging affecting authors’ traditional reindeer-herding activities) (emphasis in original). [↑](#footnote-ref-85)
86. *Apirana Mahuika*, note 26 *supra*, ¶ 9.6. [↑](#footnote-ref-86)
87. Article 2, paragraph 3(a) of the Covenant states: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” ICCPR, note 1 *supra,* art. 2(3)(a). [↑](#footnote-ref-87)
88. *See Ángela Poma Poma*, note 31 *supra*, ¶ 9. [↑](#footnote-ref-88)
89. *Lubicon Lake Band*, note 3 *supra*, ¶ 33. [↑](#footnote-ref-89)
90. *Ibid.* ¶¶ 29.8-30. [↑](#footnote-ref-90)
91. *Ibid.* [↑](#footnote-ref-91)
92. *Concluding observations: Argentina*, note 41 *supra*, ¶ 25. [↑](#footnote-ref-92)
93. *Concluding observations*: *Mexico*, note 38 *supra,* ¶ 19. [↑](#footnote-ref-93)
94. *See Consideration of reports submitted by States parties: Guyana*, note 82 *supra,* ¶ 379. [↑](#footnote-ref-94)
95. *See Report of the Human Rights Committee for the Sixty-second session,* *Consideration of reports submitted by State parties under article 40 of the Covenant: Bosnia and Herzegovina*, 1 November 2006, U.N. Doc. A/62/40 (Vol. I) (2007), ¶ 80 (23). [↑](#footnote-ref-95)
96. *Erlingur Svein Haraldsson, et al. v. Iceland*, 24 October 2007, U.N. Doc. CCPR/C/91/D/1306/2004. [↑](#footnote-ref-96)
97. *Ibid.* ¶¶ 2.1-3.2. [↑](#footnote-ref-97)
98. *Ibid.* ¶¶ 3.1-3.5. [↑](#footnote-ref-98)
99. *Ibid.* ¶¶ 10.1-11.1. [↑](#footnote-ref-99)
100. *Ibid.*, Dissenting Opinion by Committee member Ruth Wedgwood. [↑](#footnote-ref-100)
101. *Concluding observations*: *Nicaragua*, note 83 *supra*, ¶ 21. [↑](#footnote-ref-101)
102. *Ibid*. [↑](#footnote-ref-102)
103. *See Consideration of reports submitted by State parties: Australia*, note 48 *supra,* ¶¶ 508-511. [↑](#footnote-ref-103)
104. *Concluding observations: Mexico*, note 38 *supra,* ¶ 19. [↑](#footnote-ref-104)
105. *Concluding observations:* *Argentina*, note 41 *supra,* ¶ 25; *see also Concluding observations: Venezuela,* note 80 *supra*,¶ 28 (“The Committee commends the State party for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they inhabited and *enshrining the right of indigenous peoples to pursue and promote their own economic practices.*”) (emphasis added). [↑](#footnote-ref-105)
106. *Apirana Mahuika*, note 26 *supra,* ¶ 9.5. [↑](#footnote-ref-106)
107. *Ibid.* ¶ 9.7. [↑](#footnote-ref-107)
108. *Ivan Kitok v. Sweden*, 27 July 1988, U.N. Doc. CCPR/C/33/D/197/1985, ¶¶ 2.1-2.2. [↑](#footnote-ref-108)
109. *Ibid.* ¶ 4.3. [↑](#footnote-ref-109)
110. *Ibid.* ¶ 9.5. [↑](#footnote-ref-110)
111. *Ibid.* ¶¶ 9.6-9.8. [↑](#footnote-ref-111)
112. *Ibid.* ¶¶ 9.6-9.8. [↑](#footnote-ref-112)
113. *See Ilmari Länsman*, note 16 *supra,* ¶ 9.4. [↑](#footnote-ref-113)
114. *Ibid.* ¶¶ 9.6-9.8. [↑](#footnote-ref-114)
115. *Ibid.*  [↑](#footnote-ref-115)
116. *Jouni Länsman I*, note 22 *supra,* ¶ 10.5 (emphasis in original). [↑](#footnote-ref-116)
117. *Ibid.* ¶ 10.6. [↑](#footnote-ref-117)
118. *Ibid.* ¶ 10.7 (emphasis in original). [↑](#footnote-ref-118)
119. *Poma Poma v. Peru* , note 31 *supra,* ¶ 7.4 (internal citations omitted). [↑](#footnote-ref-119)
120. *Ibid.* ¶¶ 7.7, 8. The Committee also concluded that, in conjunction with the violation of Article 27 the author had also suffered a violation of Article 2, paragraph 3(a), which requires provision of an effective remedy for violations of rights under the ICCPR where the violations are perpetrated by those acting in official capacity. *Ibid.* ¶ 8. [↑](#footnote-ref-120)
121. *Ilmari* *Länsman*, note 16 *supra,* ¶ 9.7. [↑](#footnote-ref-121)
122. *Ibid.* ¶ 9.8. [↑](#footnote-ref-122)
123. *Consideration of reports submitted by State parties: Ecuador*, note 37 *supra,* ¶¶ 257-258. [↑](#footnote-ref-123)
124. *Consideration of reports submitted by State parties: France*, note 47 *supra,* ¶ 294. [↑](#footnote-ref-124)
125. *Consideration of reports submitted by State parties: Colombia*, note 36 *supra,* ¶¶ 378-379. [↑](#footnote-ref-125)
126. *Consideration of reports submitted by State parties: Italy*, note 70 *supra,* ¶ 562; *Consideration of reports submitted by State parties: Norway*, note 70 *supra,* ¶ 65. [↑](#footnote-ref-126)
127. *See, e.g., Consideration of reports submitted by State parties: Austria,* note 70 *supra,* ¶ 94 (“whether any steps had been taken to provide the population with a healthy environment by curbing pollution”); *Consideration of reports submitted by State Parties: Poland*, note 70 *supra,* ¶ 143 (“what measures had been taken against environmental pollution to protect the right to life”). [↑](#footnote-ref-127)
128. *See, e.g., Ilmari Länsman*, note 16 *supra* (stone quarrying concessions); *Jouni Länsman*, note 22 *supra* (logging concessions). [↑](#footnote-ref-128)
129. *E.H.P*., note 51 *supra*, ¶ 1.2. [↑](#footnote-ref-129)
130. *Ibid.* ¶ 4.1 [↑](#footnote-ref-130)
131. *Ibid.* ¶ 8(a). [↑](#footnote-ref-131)
132. *Ibid.* [↑](#footnote-ref-132)