United Nations CCPR/C/132/D/2552/2015

International Covenant on Civil and Political Rights

Distr.: General
21 September 2022
English
Original: Spanish

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015*, **, ***

Communication submitted by:	Benito Oliveira Pereira and Lucio Guillermo Sosa Benega, on their own behalf and that of the other members of the Campo Agua'ẽ indigenous community of the Ava Guarani people (represented by the organizations Paraguayan Human Rights Coordinating Committee and Base Investigaciones Sociales)
Alleged victims:	The authors and the other members of the Campo Agua'ẽ indigenous community
State party:	Paraguay
Date of communication:	30 September 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 26 January 2015 (not issued in document form)
Date of adoption of Views:	14 July 2021
Subject matter:	Crop fumigation with agrochemicals and its effects on an indigenous community
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to an effective remedy; right to freedom from arbitrary or unlawful interference with privacy, family or home; protection of minorities
Articles of the Covenant:	2 (3), 17 and 27
Article of the Optional Protocol:	5 (2) (b)

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** A joint opinion by Committee members Arif Bulkan, Vasilka Sancin and Hélène Tigroudja (concurring) and a joint opinion by Committee members Photini Pazartzis and Gentian Zyberi (partially dissenting) are annexed to the present Views.

1. The authors of the communication are leaders of the Campo Agua'ẽ indigenous community: Benito Oliveira Pereira, born on 13 March 1976, is a community representative officially recognized by the State party, and Lucio Guillermo Sosa Benega, born on 23 June 1973, is a teacher at the community school. They are acting on their own behalf and that of the other members of their community.[1] They claim that the State party has violated their rights under articles 17 and 27 of the Covenant, read alone and in conjunction with article 2 (3). The authors and the other members of the Campo Agua'ẽ indigenous community are nationals of Paraguay. The Optional Protocol entered into force for the State party on 10 April 1995. The authors are represented by counsel.

The facts as submitted by the authors

The Campo Agua'ẽ indigenous community

2.1 The Campo Agua'ẽ indigenous community (Canindeyú, Curuguaty) belongs to the Ava Guarani people, one of the indigenous peoples recognized in the State party's Constitution as predating the formation and organization of the State.[2]

2.2 The community of 201 people is led by the two authors. Mr. Oliveira Pereira was elected community leader at a community assembly. His traditional leadership and legal representation of the community were recognized by the State party in Decision No. 345/10 of the National Institute for Indigenous Affairs, which states: "Mr. Benito Oliveira is recognized as the leader of the Campo Agua'ẽ indigenous community." The decision also states that "he will serve as the legal representative of the aforementioned community, in keeping with the Indigenous Communities Statute (Act No. 904/81)". Mr. Sosa Benega is the teacher at the community school.

2.3 After successive encroachments on its territory, mainly by extractive businesses in the enclave economy, the Campo Agua'ẽ indigenous community obtained the legal recognition of its traditional territory in 1987 through Presidential Decree No. 21.910. The Ava Guarani people refers to its territory as *tekoha*, the basis of its entire sociopolitical and cultural organization.[3] The homes are located on the edges of the territory; the central part of the territory is made up of forest land, which provides the community with the necessary resources to preserve its cultural identity.

Fumigation with agrochemicals on neighbouring industrial farms without State party oversight

2.4 The case fits into the larger context of the expansion of mechanized farming of genetically modified crops, which the State party has encouraged, with severe social and environmental consequences. The community's territory, which is located in one of the areas that has seen the biggest expansion of agribusiness, is surrounded by large Brazilian-owned farms (Estancia Monte Verde, owned by Issos Greenfield Internacional S.A., and Estancia Vy'aha) that engage in the extensive monoculture of genetically modified soybeans.

2.5 The fumigation they carried out systematically infringed domestic environmental laws, which provide for measures to mitigate the environmental impact of certain activities[4] and impose the obligation to plant protective hedges between areas where pesticides are used and

[1] Through a power of attorney, the members of the community have designated the authors as their representatives before the Committee.

[2] Art. 62. See also Indigenous Communities Statute (Act No. 904/81).

[3] "*Teko*" means "way of being, system, law, culture, norm, behaviour, custom". *Tekoha* provides the conditions for the Guarani way of being: "Without *tekoha*, there is no *teko*."

[4] The Environmental Impact Assessment Act (No. 294/93) requires industrial farms to conduct environmental impact studies, hold an environmental permit and comply with the relevant environmental management plan. Failure to comply with the Act is punishable in accordance with the Environmental Offences Act (No. 716/96).

waterways,[5] roads[6] and settlements,[7] in order to prevent contamination. In breach of domestic legislation, both farms have failed to put in place any protective barriers and yet spray toxic agrochemicals on their crops on the land leading right up to the houses, the community school (even during school hours) and the road leading to the community, as well as near the Curuguaty, Jejuí and Lucio-cue rivers – which run through the farms before reaching the community – where the community members draw their water, fish, bathe and wash their clothes. The farms use legal agrochemicals, but do not fulfil their registration obligation (para. 2.6); they also use banned agrochemicals (para. 2.27) and glyphosate (whose harmful effects are currently being discussed by the scientific community).[8]

2.6 The farms' actions can be explained by the failure of the State, as the entity responsible for overseeing the use, commercialization, distribution, export, import and transport of phytosanitary products for agricultural use, to fulfil its obligation to authorize and monitor those activities. In particular, controlled agrochemicals (categorized as "red stripe" because of their high or extreme toxicity), as well as the people who use them, must be registered with the National Plant and Seed Quality and Health Service.[9] This organization is also responsible for verifying that the products being used have been authorized by a technical adviser registered with it and that farms maintain the required hedges and buffer zones.

2.7 The authors recall that the situation they face has already been observed by various United Nations human rights treaty bodies and non-treaty mechanisms. As early as 2007, the Committee on Economic, Social and Cultural Rights noted with concern that the expansion of soybean cultivation had fostered the indiscriminate use of toxic agrochemicals, leading to deaths and illnesses, contamination of the water supply and the disappearance of ecosystems, while it had jeopardized the traditional food resources of the affected communities. It therefore requested the State party to ensure compliance with current environmental laws.[10] In 2010, the Committee on the Rights of the Child expressed its concern at the negative consequences of agro-toxic fumigation faced by peasant families.[11] In 2011, the Committee on the Elimination of Discrimination against Women requested the State party to undertake a study of the misuse of toxic agrochemicals and eradicate their impact on the health of women and their children.[12] In 2012, the Special Rapporteur on extreme poverty and human rights noted that the expansion of soybean monoculture and the abuse and lack of oversight of agrochemicals was seriously endangering the environment and the health of indigenous communities and that the State had taken absolutely no action, thereby putting at grave risk the lives of the people whose homes were surrounded by soybean plantations, especially in Canindeyú.[13]

Consequences of the contamination

2.8 The large-scale fumigation conducted by both farms is reducing the biodiversity of the indigenous territory and destroying the natural resources that are not only a source of food

[5] Decree No. 18831/86 establishes the obligation to leave a treed buffer zone of at least 100 metres in the vicinity of rivers, streams, water sources and lakes.

[6] Decree No. 2048/04 on protective hedges along roads stipulates that such hedges must be at least 5 metres wide and 2 metres high and be composed of dense foliage. In the absence of such hedges, there must be a 50-metre buffer zone where no pesticides are used.

[7] Decision No. 485/03 requires a 100-metre buffer zone between areas where pesticides are used and human settlements, schools, health-care facilities, places of worship and public spaces.

[8] F. Adams et al., "Diagnóstico de la presencia de glifosato en arroyos superficiales de los departamentos de Canindeyú y San Pedro" (testing for glyphosate in surface streams in the departments of Canindeyú and San Pedro), Nuestra Señora de la Asunción Catholic University and the National Schools of Geology and Agronomy at the National Polytechnic Institute of Lorraine (France).

[9] Act No. 3742/2009 on the oversight of phytosanitary products for agricultural use; Act No. 123/91 on new forms of Phytosanitary protection, and Decision No. 388/2008 of the National Plant and Seed Quality and Health Service.

[10] E/C.12/PRY/CO/3, paras. 16 and 27.

[11] CRC/C/PRY/CO/3, para. 50.

[12] CEDAW/C/PRY/CO/6, para. 33.

[13] A/HRC/20/25/Add.2, paras. 47–48.

but also the origin of ancestral cultural practices related to hunting, fishing, woodland foraging and Guarani agroecology. The situation of extreme poverty in which the community lives, without electricity, drinking water, sanitation services or a health-care facility, was made worse by the destruction of its natural resources.

2.9 Furthermore, after every fumigation, obvious symptoms of poisoning (diarrhoea, vomiting, respiratory problems and headaches) appear among the community, including in children, as fumigation is undertaken mere metres from their school during school hours. Their water sources, namely the Curuguaty, Jejuí and Lucio-cue rivers, are being polluted generally.

2.10 In addition, after the rains, when the contaminated water trickles down from the plantations, farm animals (chickens and ducks) die, and crops (corn, cassava and sweet potato) suffer. More generally, fruit trees stop yielding fruit and colonies of forest bees die off in large numbers.

Criminal complaint

2.11 On 30 October 2009, the authors filed a criminal complaint with the Environmental Crimes Unit of Curuguaty regarding the health problems they experience after every fumigation.

2.12 On 3 November 2009, the prosecutor's office notified the Criminal Court of Curuguaty that it had launched an investigation (file No. 1303/09, "Enquiry into an alleged punishable environmental offence – abuse of agrochemicals"). On 5 November 2009, it also notified the National Plant and Seed Quality and Health Service of the investigation.

2.13 On 17 November 2009, officials from the prosecutor's office travelled to the indigenous territory, interviewed members of the community and toured the borders of the territory, where they observed that the community was indeed surrounded by two farms engaged in intensive soybean cultivation only a few metres from homes and the school and that there were no protective hedges.[14]

2.14 On 27 November 2009, the prosecutor travelled to the community to verify the findings and observed that the homes and school were within 10 metres of soybean plantations and that the protective hedges had not been planted. Having made her way to the front gate of the farms, she also requested to see the farms' environmental licences, which the managers were unable to produce, arguing that they were held by their superiors, who lived in Brazil.[15]

2.15 On 24 May 2010, the prosecutor's office requested that environmental technicians conduct a chemical survey in the community, to include the collection of water, blood and urine samples. Due to a processing error, the technical unit returned the request to the prosecutor's office. In the absence of any follow-up, no testing was conducted.

2.16 On 3 August 2010, the authors requested that those responsible be charged with violations of article 203 of the Criminal Code, on collective risks arising from the spraying of toxic substances, the Environmental Offences Act (No. 716/96) and the articles of the Constitution that safeguard the rights of indigenous peoples. They claimed that the fumigation infringed their rights to life, integrity and health and caused the loss of livestock, communal crops, fruit trees and hunting and fishing resources.

2.17 On 9 August 2010, having gathered sufficient evidence of breaches of environmental law, the prosecutor's office pressed charges against the owners of the farms and set a six-month deadline for the conduct of the pre-indictment investigation.

2.18 On 2 October 2010, the authors filed a complaint as joint plaintiffs. They claimed a violation of their right to adequate food (due to the death of their chickens and ducks caused by contaminated water and to the loss of their subsistence crops and fruit trees), their right to water (since they drew their water from contaminated rivers) and their right to health. They

[14] File No. 1303/09, p. 5.

[15] Ibid., pp. 6–7.

also claimed that the community was falling apart. The authors requested that certain evidence be gathered.

2.19 On 23 November 2010, the court admitted the charges against the farm owners and set 23 May 2011 as the deadline for indictment. On 4 February 2011, the authors brought a formal complaint against both farm owners, requesting that the case be brought to trial. On 9 February 2011, the prosecutor's office filed an indictment, but it was returned owing to serious formal defects.

2.20 On 2 March 2011, at the authors' request, another judicial inspection was carried out in the community during which it was observed that the farm owners had not remedied the breach of their obligation to plant hedges and create buffer zones.

2.21 On 10 and 28 March 2011, the defendants acknowledged their liability and requested a "conditional suspension of proceedings", a procedural device allowing for a trial to be suspended for the gathering of evidence, during which time the defendants must follow specific rules with a view to the termination of the criminal suit.[16]

2.22 On 28 March 2011, the authors added the academic report "Diagnóstico de la presencia de glifosato en arroyos superficiales de los departamentos de Canindeyú y San Pedro" (footnote 9) to the criminal case file.

2.23 On 1 June 2011, the prosecutor's office filed another indictment against the farm owners, noting that "the act fully meets the definition of the offence".[17]

2.24 The case remained stalled for two years because the initial hearing was suspended on seven occasions; on six of these occasions, the reason for the suspension was failure to notify the parties.[18]

2.25 The initial hearing was finally held on 25 June 2013. The Public Prosecution Service moved for a temporary stay of proceedings against both the accused, arguing a lack of evidence. On 30 July 2013, the Public Prosecution Service sustained the motion and ordered 15 pieces of evidence to be obtained (7 of which had been requested by the authors but denied by the Public Prosecution Service). On 23 September 2013, the court stayed the proceedings against the farm owners.

2.26 At the time of submission of the communication, no action had been taken to obtain any of those pieces of evidence.

Administrative complaint

2.27 The authors also lodged a complaint with the National Plant and Seed Quality and Health Service. On 12 January 2010, an inspection of both farms found large quantities of the herbicide paraquat and the insecticide endolsufan, in violation of environmental laws, as their use had not been registered with National Plant and Seed Quality and Health Service even though their high toxicity made them "red stripe" products. Inspectors also discovered empty containers of the insecticide chlorpyrifos, whose commercialization is banned because, in addition to the chemical's extreme toxicity for fish and bees, exposure to it has been linked to neurological effects and developmental and autoimmune disorders.

2.28 Despite the foregoing, the complaint has not led to any change, and the community continues to be harmed by the fumigation.

The complaint

3.1 The authors claim that, having initiated ordinary criminal proceedings, they have exhausted the available domestic remedies. They also claim that the communication should

[16] File No. 1303/09, p. 58.

[17] File No. 1303/09, pp. 64 ff.

[18] The initial hearing was scheduled on 1 July 2011 but was suspended because the parties had not been notified. It was rescheduled for 21 December 2011, then 12 and 25 July 2012 and 20 March 2013, but was suspended each time because the parties had not been notified. It was rescheduled again for 17 April 2013 but was suspended at the request of the prosecutor, who had to take part in another trial. On 22 May 2013, the initial hearing was suspended again because the parties had not been notified.

qualify as an exception to the prerequisite of prior exhaustion insofar as the domestic remedies that they have sought have been unreasonably prolonged.

3.2 The authors note that initiating criminal proceedings in defence of the environment and indigenous peoples is the remit of the Public Prosecution Service.[19]

3.3 The authors claim that the fumigation violates the rights of the community members under articles 17 and 27 of the Covenant, on the grounds that the farms have not complied with environmental law, the State party has not discharged its duty to provide protection and the community was not consulted about the activities adversely affecting its territory.

3.4 First, the authors claim a violation of article 17 of the Covenant, recalling that the State has an obligation to establish effective safeguards against interference and attacks, whether by State authorities or by natural or legal persons, and to adopt measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.[20]

3.5 In the case of indigenous peoples, the authors claim that the notions of "home" and "privacy" should be understood in the context of the special relationship, in particular the collective aspects thereof, that indigenous people have with their territories, in keeping with articles 25 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples. In addition, they recall that, according to the Committee's jurisprudence, these notions may fall under the sphere of protection afforded by article 17.[21] The authors claim that, in the present case, these notions should encompass not only the huts or homes, but also the entire territory established for the community, as it is in this territory that the Guarani indigenous identity is expressed.

3.6 The authors note that the sphere of protection afforded by article 17, interpreted in the light of general comments No. 16 (1988) and No. 31 (2004), includes protection of the home and privacy from environmental pollution caused by the actions of third parties when those actions constitute unlawful or arbitrary interference with their privacy. Therefore, the State bears *culpa in vigilando* when it fails to enforce the laws governing agricultural activities conducted by third parties that cause pollution which has a detrimental effect on people's home or privacy, in line with the case law of the European Court of Human Rights.[22]

3.7 In the present case, the authorities had sufficient evidence to identify a causal link between, on the one hand, extensive spraying of toxic agrochemicals by the farms, the improper disposal of agrochemicals subject to environmental regulation and of banned agrochemicals, non-compliance with environmental laws regarding protective hedges and the presence of glyphosate in the rivers where the community members fish and draw water and, on the other, the contamination of waterways, the destruction of subsistence crops, the death of livestock, the mass extinction of fish and bees, and health problems.

3.8 Secondly, the authors claim a violation of article 27 of the Covenant as a result of the loss of the necessary conditions to preserve the community's culture.

3.9 They recall that the Committee has recognized in its jurisprudence that the rights protected under article 27 include the right to engage in economic and social activities which are part of the culture of the community.[23] Specifically, in the case of indigenous peoples, the right to enjoy a particular culture may relate to a way of life which is closely associated with territory and use of its resources, including such traditional activities as fishing or hunting. Safeguarding this right may require measures to ensure the participation of members of indigenous communities in decisions that affect them, thereby guaranteeing the survival and

[19] Constitution, art. 268 (2).

[20] General comment No. 16 (1988), para. 1.

[21] *Hopu and Bessert v. France* (CCPR/C/60/D/549/1993/Rev.1), para. 10.3.

[22] *López Ostra v. Spain*, judgment of 9 December 1994, application No. 16798/90, paras. 51, 55 and 58; *Fadeyeva v. Russia*, judgment of 9 June 2005, application No. 55723/00, paras. 68–70; and *Dubetska and Others v. Ukraine*, judgment of 10 February 2011, application No. 30499/03, para. 105. In their response, the authors also refer to *Cordella and Others v. Italy*, judgment of 24 January 2019, applications No. 544141/13 and No. 54624/15, paras. 158 and 173–174, and to Human Rights Committee, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.8.

[23] *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 7.3.

continued development of cultural identity and enriching the fabric of society as a whole. It is, therefore, of vital importance that measures that interfere with activities of cultural value to an indigenous community are taken with the free, prior and informed consent of the members of the community and respect the principle of proportionality so as not to endanger the very survival of the community and its members.[24]

3.10 In the present case, the authors claim article 27 was violated because not only were the members of the community not consulted, but serious environmental changes have resulted in the destruction of the natural resources that are the source of their cultural identity, thus violating their right to enjoy their culture. In particular, the authors claim that biodiversity loss in their territory has had significant impacts on their culture. First, they now have fewer food sources at their disposal, causing the loss of traditional know-how associated with their cultural practices in the areas of hunting, fishing, foraging and Guarani agroecology. Secondly, it has become impossible to conduct their baptism ceremonies (*mitãkarai*) owing to (a) the disappearance of the materials from the forest needed to build the dance houses (*jerokyha*), (b) the disappearance of the *avati para* variety of corn with which they made the liquor (*kagüi*) that constitutes a fundamental and sacred ritual element of the ceremony and (c) the impossibility of obtaining the wax used to make the ceremonial candles due to the mass extinction of forest bees (*jateí*). The loss of this ceremony has left children without a rite crucial to the consolidation of their cultural identity, and the last religious leaders (*oporaiva*) have been left without apprentices, which threatens the preservation of the community's cultural identity. Thirdly, the community structure has eroded, as a number of families have left, fleeing the situation of extreme poverty brought on by the destruction of their territory's resources.

3.11 The authors also claim a violation of article 2 (3) of the Covenant, read in conjunction with articles 17 and 27, owing to the lack of an effective judicial remedy for the community in the face of the reported breaches. Despite the fact that the Public Prosecution Service is responsible for initiating criminal proceedings ex officio in criminal matters relating to the environment and the rights of indigenous peoples, and for seeing such proceedings through to their conclusion, the investigation has been unreasonably prolonged and the prosecutor's office has not obtained the 15 pieces of evidence that were requested (para. 2.25). The ineffectiveness of the proceedings has resulted in impunity for the perpetrators and has allowed the contamination to continue.

3.12 Furthermore, the State party has not explained why it did not accede to the defendants' requests for a "conditional suspension of proceedings", which could have given rise to an agreement on reparations (para. 2.21).

3.13 In addition, the Public Prosecution Service failed in its obligation to hire a technical consultant specializing in indigenous issues, who would have brought a cultural diversity perspective to the investigation, documented the specific impact of the violations on indigenous communities and ensured that their collective rights enshrined in the Constitution were respected.[25]

3.14 The authors request various measures of reparation. For instance, they request that the facts be investigated, that the authors be guaranteed access to all the stages and levels of the investigation, and that all those responsible for the violations be punished. They also request that all necessary steps be taken to prevent the reoccurrence of such acts in the future. In particular, a relevant measure that the Paraguayan State could take as a guarantee of non-repetition would be the establishment of an agroenvironmental entity and the adoption of a code of agricultural and environmental procedure (para. 5.6). Another measure the authors request is a guarantee that the members of the community will receive appropriate comprehensive reparation, including the reimbursement of legal costs and, following consultations and the obtainment of their free, prior and informed consent, the implementation of plans to restore the agroenvironmental health of their territory and provide access to safe drinking water, sanitation, decent housing and public health services.

[24] Ibid., paras. 7.2 and 7.6.

[25] Code of Criminal Procedure, arts. 432–433.

State party's observations on admissibility and the merits

4.1 On 4 November 2019,[26] the State party requested the Committee to declare the communication inadmissible with regard to the community because, while domestic legislation recognizes collective rights, the Covenant safeguards individual rights only. Therefore, only violations against the authors can be examined.

4.2 In addition, the State party claims that the communication is inadmissible for the authors' failure to exhaust domestic remedies, as their complaint at the domestic level related to environmental harm, which is not covered in the Covenant, and not to the rights referred to in articles 17 and 27 of the Covenant.

4.3 The State party further claims that the ordinary criminal procedure was not the appropriate remedy and should have been in complement to other, prior and less burdensome remedies at the administrative and civil levels. It submits that the appropriate remedies would have been a complaint with the Secretariat for the Environment (now called the Ministry of the Environment and Sustainable Development), a civil possessory action and a remedy of *amparo*.

4.4 Regarding the alleged violation of article 17 of the Covenant, the State party submits that the facts have no bearing on the authors and that there is no evidence that agrochemicals have reached the indigenous territory or that the poisoning is due to contact with agrochemicals. The survey on the presence of glyphosate adduced by the authors was not validated by the State party.

4.5 The State party rejects the allegation of a violation of article 27 with regard to the community, as the Covenant does not recognize collective rights, and to the authors, who have not demonstrated having been affected personally.

4.6 The State party also rejects the allegation of a violation of article 2 (3) of the Covenant on account of the authors' failure to exhaust the appropriate domestic remedies.

4.7 Lastly, the State party submits that it fulfils the rights of indigenous peoples insofar as a chapter of the Constitution is devoted to the issue, it adopted the Indigenous Communities Status Act (No. 904/81), the community's territory has been established and recognized and its legal representative, in the person of Mr. Benito Oliveira, was officially recognized.

Authors' comments on the State party's observations

5.1 In a submission dated 20 December 2019, the authors rejected the State party's claim that the Committee is not competent to consider violations against an indigenous community, arguing that this is a restrictive approach that ignores trends in international human rights law and the State party's own legislation. It is essential to recognize that indigenous communities are rights holders; to do otherwise would be to deny their identity.

5.2 The authors recall that, in the Committee's view, the right to culture is exercised in social and cultural settings in community with the other members of the group.[27] Furthermore, indigenous law has evolved so that indigenous groups, as collective subjects, are now themselves considered to be rights holders and are no longer seen merely as the sum of their members. The Special Rapporteur on the rights of indigenous peoples was unequivocal about this in 2007, stating that indigenous peoples must thus be identified as subjects of collective rights that complement the rights of their individual members.[28] Furthermore, the Committee on Economic, Social and Cultural Rights noted in 2009 that indigenous groups should be granted rights holder status.[29] As from 2012, the Inter-American Court of Human Rights stopped finding violations of the rights of members of indigenous peoples in recognition of the fact that relevant international law "recognizes rights to the peoples as collective subjects of international law and not only to members in view of the fact that ..., united by their

[26] After three reminders from the secretariat to the State party (in February 2016, March 2017 and August 2018) and the publication of the Views in the case *Portillo Cáceres et. al. v. Paraguay*.

[27] General comment No. 23 (1994).

[28] A/HRC/6/15, para. 17.

[29] General comment No. 21 (2009), paras. 3 and 9.

particular ways of life and identity, [they] exercise some rights ... from that collective perspective."[30] The Court thus recognizes indigenous communities as having the legal standing to defend their rights.[31]

5.3 The foregoing is in line with the general interpretative rules established in the Vienna Convention on the Law of Treaties, as human rights treaties are living instruments whose interpretation is subject to change. Thus, the Covenant should be interpreted in the light of the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples, which stipulate that indigenous persons have rights not only as individuals but also as peoples. The authors assert that the Human Rights Committee, in its general comment No. 36 (2018), does not consider indigenous peoples as the mere sum of their members (unlike, for instance, members of ethnic or religious minorities). Moreover, the State party's legislation protects indigenous peoples as rights holders in their own right.

5.4 Regarding the communication's supposed inadmissibility on the grounds that the authors raised environmental rights at the domestic level rather than articles of the Covenant, the authors note that the arguments they raised at the domestic level are essentially the same as those raised before the Committee. They recall that, in *Portillo Cáceres et al. v. Paraguay*, the Committee declared itself competent to consider violations of the rights to privacy, family and an effective remedy arising from the State party's failure to fulfil its positive obligation to protect those rights in situations that, at the domestic level, entailed enforcing environmental standards. The Committee should arrive at the same conclusion in the present case given that the authors are claiming violations of environmental law that affect an indigenous territory and, hence, the group's home, privacy and cultural life.

5.5 As for the alleged inappropriateness of the criminal remedy, the authors submit that it was the most appropriate remedy – in keeping with article 268 (2) of the Constitution and the provisions on environmental offences contained in Act No. 716/96 and the Criminal Code – because it provided for the inclusion of the widest range of evidence and required that a technical consultant specializing in indigenous issues be assigned to the case. In addition, the authors note that they did file a complaint with the competent administrative body (the National Plant and Seed Quality and Health Service); that civil possessory actions are of little use in defending environmental or cultural rights; that the remedy of *amparo* has very strict admissibility requirements; that, having applied for the ordinary forms of protection, it was unnecessary to file an extraordinary remedy whose outcome might be fragmented (*amparo* does not guarantee the punishment of individual offenders or provide for compensation or redress for environmental damage); and that the summary nature of the remedy of *amparo* does not allow for an exhaustive discussion of the evidence.

5.6 The authors submit that the appropriate remedy would have been to lodge a complaint with an agroenvironmental body. They note that relevant bills have been drafted, the latest of which was submitted to the Chamber of Deputies in October 2016 and is currently under consideration. This bill provides for the establishment of an agroenvironmental entity that would be competent to adjudicate disputes over the protection of the rights of indigenous communities and stipulates that "the effectiveness of an environmental legal safeguard can be guaranteed only through the establishment of an agroenvironmental entity, a code of agricultural and environmental procedure and specialized courts", as the "traditional model of ordinary proceedings does not meet the criteria for environmental protection". Therefore, "it is necessary to establish rapid dispute resolution procedures, along with interim measures, taking into account that some environmental damage may be irreversible".[32] The authors submit that a relevant measure that Paraguay could take as a guarantee of non-repetition would be the establishment of an agroenvironmental entity and the adoption of a code of agricultural and environmental procedure.

[30] Established jurisprudence since the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, judgment of 27 June 2012, paras. 231 and 341, declarative points 2–4.

[31] Advisory opinion No. 22, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, 26 February 2016, para. 72.

[32] The bill on the establishment of an agroenvironmental entity and a code of agricultural and environmental procedure of 19 September 2016.

5.7 The authors repeat their claim of a violation of article 17 stemming from the State party's failure to discharge its duty to provide protection in connection with the spraying of agrochemicals, which have had a negative impact on the community's privacy and home. They submit that the facts of the case do relate to the community representatives, as they belong to the Ava Guarani people, live in the community and are themselves victims along with the other members of the community. They also submit that, by not taking action to obtain the 15 pieces of evidence requested by the Public Prosecution Service and by disputing the report on traces of glyphosate without providing corroborating evidence of its position, the State party cannot defend itself by arguing a lack of evidence. The burden of proof does not lie solely with the authors of the communication given that they do not enjoy the same access to evidence as the State party, especially as members of an indigenous community living in extreme poverty.

5.8 In response to the State party's observations regarding article 27 of the Covenant, the authors recall that they, in their capacity as leader and teacher, have a personal responsibility towards the community to ensure the intergenerational transmission of the culture. They reaffirm that the State party has an international responsibility for the serious environmental damage that has undermined the group's cultural integrity.

5.9 Lastly, the authors repeat their claims regarding the violation of article 2 (3) of the Covenant, noting that, at the time of submission of their comments, it had been ten years since the start of proceedings domestically.

State party's additional observations

6. On 16 June 2020, the State party repeated its argument that the authors' attempt to claim collective rights is at odds with the Covenant. It also reiterated its position that the content of articles 17 and 27 of the Covenant were not referred to in the course of the domestic remedies sought and that the criminal proceedings initiated by the authors did not constitute an appropriate remedy.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's argument that the communication is inadmissible on the grounds that domestic remedies were not exhausted, as articles 17 and 27 of the Covenant were not invoked at the domestic level – where the claims centred around environmental issues – and that the criminal remedy sought by the authors was not the appropriate course of action. The Committee also notes the authors' arguments that (a) the criminal remedy was the most appropriate avenue to pursue; (b) the essence of their claims to the Committee was also invoked before the national courts; (c) a complaint was lodged with the competent administrative body; and (d) neither the civil possessory action nor the remedy of *amparo* would have been appropriate.

7.4 First, the Committee notes that the State party's objection to admissibility on grounds of the failure to exhaust domestic remedies appears to be linked to a claim of inadmissibility *ratione materiae* on account of the fact that environmental rights are not in the scope of the Covenant. The Committee also notes, however, that the authors are not claiming a violation of the right to a healthy environment but rather violations of their rights to privacy, family life, cultural life and an effective remedy and that they are doing so because the State party has failed in its obligation to protect those rights, which, in the case at hand, would entail

enforcing environmental standards.[33] Specifically, the authors' complaint at the domestic level was that fumigation carried out without State oversight had caused the death of their chickens and ducks, the loss of their subsistence crops and fruit trees, the disappearance of hunting, fishing and foraging resources and the contamination of waterways, as well as harm to their health; and that all of this had led to the disintegration of the community. Consequently, the Committee is of the opinion that article 3 of the Optional Protocol does not constitute an obstacle to the admissibility of the present communication, which it is free to examine because, in the specific circumstances of the case, the foregoing relates to the substance of articles 17 and 27 of the Covenant.

7.5 The Committee is also of the opinion that, in accordance with the State party's legislation, in particular the Criminal Code and Act No. 716/96, the criminal remedy sought by the authors was the appropriate remedy, as demonstrated by the fact that the prosecutor's office launched an investigation and pressed charges against the owners of the farms, that the court admitted those charges and that the prosecutor's office twice submitted an indictment, noting that "the act fully meets the definition of the offence". The authors also lodged an administrative complaint with the National Plant and Seed Quality and Health Service. In a very similar case, the Committee found that neither the complaint filed with the Secretariat for the Environment nor the remedy of *amparo* had been effective and further noted that a civil action would not have been so either.[34] Given that more than 10 years have passed without significant progress being made on the case or the State party providing any justification for the delay, the Committee finds the communication admissible under article 5 (2) (b) of the Optional Protocol.

7.6 The Committee notes the State party's argument that the communication may be found admissible only with regard to the authors, not to the community. The Committee also notes the argument of the authors, who are acting on their own behalf and as representatives of the other members of their community, that indigenous groups are collective rights holders.

7.7 Recalling its decision on admissibility in the case submitted by the President of the Sami Parliament on her own behalf and that of the Sami people of Finland,[35] the Committee does not see any obstacle to the consideration of the present communication with regard not only to the authors, but also to the other members of the Campo Agua'ẽ indigenous community, on whose behalf Mr. Oliveira Pereira is authorized to act, according to domestic legislation (paras. 2.2 and 4.7 of the present communication), and on whose behalf both authors are authorized to act before the Committee, in keeping with the power of attorney signed by the community.

7.8 The admissibility requirements having been met and the authors' claims based on articles 2 (3), 17 and 27 of the Covenant having been sufficiently substantiated for the purposes of a finding of admissibility, the Committee declares the communication to be admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claims that the facts of the present case constitute a violation of article 17 on the grounds that their livestock, crops, fruit trees and hunting, fishing and foraging resources are elements of their private life, family life and home and that the lack of State oversight of the agricultural activity at the source of the pollution – which has poisoned their waterways, destroyed their subsistence crops, killed their livestock, caused the mass extinction of fish, bees and prey and triggered health problems – therefore constitutes arbitrary interference with their privacy, family life and home. The authors specify that, in the case of indigenous peoples, the notions of "home" and "privacy" should be understood within the context of the special relationship indigenous peoples have with their

[33] *Portillo Cáceres et al. v. Paraguay*, para. 6.3.
[34] Ibid., paras. 6.5 and 7.9.
[35] *Sanila-Aikio v. Finland* (CCPR/C/119/D/2668/2015), para. 8.5.

territories. The Committee also notes that, according to the State party, article 17 has not been violated because the facts have no personal bearing on the authors and there is no evidence that the agrochemicals reached the territory of the community.

8.3 The Committee notes that the authors and the other members of the Campo Agua'ẽ indigenous community belong to the Ava Guarani people, one of the indigenous peoples recognized in the State party's Constitution as predating the formation and organization of the State (para. 2.1). The community obtained legal recognition of its traditional territory in 1987 through Presidential Decree No. 21.910. Its homes are located on the edges of the territory; the central part of the territory is made up of forest land, which provides the community with the necessary resources to preserve its cultural identity (para. 2.3). The Committee further notes that the members of the indigenous community, including the authors, depend for their subsistence on crops, livestock, fruit trees, hunting, foraging, fishing and water resources, which are all elements of the territory where they reside and enjoy their privacy. This has not been contested by the State party. The Committee considers that the aforementioned elements are part of the way of life of the authors and other community members, who enjoy a special relationship with their territory,[36] and that these elements can be considered to fall within the scope of protection of article 17 of the Covenant.[37] In addition, the Committee recalls that article 17 should not be understood as being limited to refraining from arbitrary interference, but rather as covering the obligation to adopt the necessary positive measures to ensure the effective exercise of this right, whether the interference emanates from the State authorities or from natural or legal persons.[38]

8.4 In the present case, the Committee notes that the State party did not adequately monitor the illegal activities at the source of the contamination, which have been widely documented (para. 2.7),[39] observed by the State party itself (paras. 2.13–2.23)[40] and even acknowledged by both of the accused farm owners (para. 2.21). By inadequately monitoring the activities, the State party failed to prevent the contamination. This failure in its duty to provide protection made it possible for the large-scale, illegal fumigation, including with banned agrochemicals, to continue for many years, not only causing health problems among community members – including children, as the fumigation was carried out mere metres from the school during school hours – but also contaminating the community's waterways, destroying its subsistence crops, killing its livestock and triggering the mass extinction of fish and bees, all basic components of the members' private life, family life and home. The Committee notes that the State party has not provided an alternative explanation to contradict the alleged causal link between the fumigation with agrochemicals and the aforementioned harm.[41] When contamination has direct repercussions on the right to one's privacy, family life and home, and its consequences are serious, then the degradation of the environment adversely affects the well-being of individuals and constitutes a violation of privacy, family life and the home.[42] Consequently, in the light of the information that it has before it, the Committee concludes that the events at issue in the present case disclose a violation of article 17 of the Covenant.

8.5 The Committee notes the authors' claim that the facts also constitute a violation of article 27. The authors submit that the serious environmental damage caused by the fumigation has had severe repercussions amounting to a negation of the right to enjoy their culture. First, the disappearance of the natural resources needed for their subsistence threatens, in turn, their ancestral practices in the areas of hunting, fishing, woodland foraging and

[36] United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (1); Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997), para. 5.

[37] *Hopu and Bessert v. France*, para. 10.3; *Portillo Cáceres et al. v. Paraguay*, para. 7.8.

[38] General comment No. 16 (1988), para. 1.

[39] See also *Portillo Cáceres et al. v. Paraguay*.

[40] The presence of plantations adjacent to which no protective hedges had been planted, the illegal disposal of authorized but regulated agrochemicals and the disposal of illegal agrochemicals were observed. The owners of the two farms were charged and later indicted, the acts having fully met the definition of the offence.

[41] The Committee also points out that the State party has made few arguments in rebuttal of the authors' claims.

[42] *Portillo Cáceres et al. v. Paraguay*, para. 7.8.

Guarani agroecology, thus leading to the loss of traditional knowledge. Secondly, the ceremonial aspects of baptism (*mitãkarai*) are no longer practised owing to the disappearance of the materials from the forest needed to build the dance houses (*jerokyha*), of the *avati para* variety of corn with which they made the liquor (*kagüi*) that constitutes a fundamental sacred ritual in the ceremony and of the wax used to make the ceremonial candles due to the mass extinction of forest bees (*jatei*). The loss of this ceremony has left children without a rite crucial to strengthening their cultural identity, and the last religious leaders (*oporaiva*) have been left without apprentices, which threatens the preservation of the community's cultural identity. Thirdly, the community structure is being eroded as families are forced to leave the community. The authors specify that they, in their capacity as leader and teacher, have a personal responsibility towards the community to ensure the intergenerational transmission of the culture. The Committee further notes the State party's assertion that, while its domestic legislation recognizes collective rights, article 27 of the Covenant does not, and that the authors have not demonstrated having been affected personally.

8.6 The Committee recalls that, in the case of indigenous peoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting. Thus, the protection of this right is directed towards ensuring the survival and continued development of the cultural identity.[43] As also stated by the Committee on Economic, Social and Cultural Rights, the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.[44] Therefore, "indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity".[45] Furthermore, the Human Rights Committee notes that the Committee on the Elimination of Racial Discrimination has stated that the close ties of indigenous peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival. Their relations to the land are a material and spiritual element which they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to "prevent their extinction as a people".[46] The Committee finds that article 27, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.

8.7 The Committee also recalls that measures should be taken to ensure that indigenous peoples can effectively participate in decisions of concern to them.[47] Specifically, it is of vital importance that measures that compromise or interfere with the culturally significant economic activities of an indigenous community are taken with the free, prior and informed consent of the members of the community and respect the principle of proportionality so as not to endanger the very survival of the community.[48] In this regard, the Committee notes that the State party's legislation safeguards the right of indigenous peoples to be consulted about activities that may affect their territories.[49]

[43] General comment No. 23 (1994), paras. 3.2, 7 and 9; *Poma Poma v. Peru*, para. 7.2, and CCPR/C/PRY/CO/4, paras. 44–45.

[44] General comment No. 21 (2009), para. 36; and United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (1).

[45] General comment No. 21 (2009), para. 36; and United Nations Declaration on the Rights of Indigenous Peoples, arts. 20 and 33.

[46] *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), para. 6.6, citing the Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para. 149, and *Case of the Saramaka People v. Suriname*, judgment of 28 November 2007, para. 121.

[47] General comment No. 23 (1994), para. 7; *Poma Poma v. Peru*, para. 7.2; and United Nations Declaration on the Rights of Indigenous Peoples, art. 32.

[48] *Poma Poma v. Peru*, para. 7.6; and *Ågren et al. v. Sweden*, para. 6.7.

[49] Decree No. 1039/18.

8.8 In the present case, the Committee notes that the authors and other members of the community exercise the right to enjoy their culture through a way of life that is closely linked with their territory and the use of the natural resources found therein. The Committee also notes that the large-scale fumigation with toxic agrochemicals presents a threat which the State party could reasonably have foreseen. Not only were the competent State authorities notified of the activities and their impact on the community members, but the prosecutor's office found that the acts fully met the definition of the offence (para. 2.23) and the accused themselves acknowledged their liability (para. 2.21). Yet, the State party did not put a stop to the activities, thus allowing the continued contamination of the rivers in which the authors fish, draw their water, bathe and wash their clothing, the further death of their livestock, a source of food, and the ongoing destruction of their crops and the resources in the forest where they forage and hunt. The Committee further notes that the State party has not provided an alternative explanation of what happened or demonstrated having taken any steps whatsoever to protect the right of the authors and other community members to their cultural life. The Committee accordingly finds that the facts before it disclose a violation of article 27 of the Covenant with regard to the Campo Agua'ẽ indigenous community.

8.9 Lastly, the Committee notes the authors' claim that the facts also constitute a violation of article 2 (3) of the Covenant, read in conjunction with articles 17 and 27, on the grounds that there was no effective judicial remedy to protect them from the violations that they had reported. In particular, the authors pointed out that, although the authorities had sufficient evidence to determine a causal link between the farms' illegal use of toxic agrochemicals and the adverse effects on the community's health and the integrity of the territory – which led the prosecutor's office to initiate criminal proceedings – the criminal investigation launched in 2009 has not been completed, the evidence requested by the Public Prosecution Service has not been obtained, the unlawful fumigation has continued, in breach of national law, and no reparation has been provided, even though, having acknowledged their liability, the accused requested a conditional suspension of proceedings that could have led to a reparations agreement. Moreover, in violation of the Code of Criminal Procedure, the Public Prosecution Service did not engage a technical consultant specializing in indigenous issues, who would have sought to ensure that the investigation included a cultural diversity perspective and that it documented the specific impact of the violation on the community members. Therefore, the Committee is of the view that, more than 12 years after the authors filed their criminal complaint regarding the fumigation with toxic agrochemicals, to which they have continued to be exposed throughout this period, the investigations have not progressed in any meaningful way and the State party has not justified the delay or enabled the making of reparations, in violation of article 2 (3) of the Covenant, read in conjunction with articles 17 and 27.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 17 and 27 of the Covenant, read alone and in conjunction with article 2 (3).

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide an effective remedy. In that connection, the State party should: (a) conduct an effective and exhaustive investigation of the facts, keeping the authors appropriately informed; (b) initiate criminal and administrative proceedings against the alleged perpetrators and, if they are found guilty, impose appropriate penalties; (c) make full reparation to the authors and other members of the community for the harm caused, including appropriate compensation and reimbursement of legal costs; and (d) take all necessary measures, in close consultation with the community, to repair the environmental damage. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and legally enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated, particularly in a daily newspaper with a large circulation in the Department of Canindeyú and in the Ava language.

Annex I

[Original: English]

Joint opinion of Committee members Arif Bulkan, Vasilka Sancin and Hélène Tigroudja (concurring)

1. We fully concur with the Views of the Committee and consider that the facts disclose a violation of articles 17 and 27 of the Covenant. The protracted pollution and extensive use of pesticides by agrochemical companies for soyabean cultivation have harsh consequences.[1] They have a dramatic impact on the way of life of vulnerable groups and, especially, of indigenous communities, as illustrated in the Views to which the present opinion is annexed.

2. We regret, however, that one of the main issues at stake in this case, in other words the consequences of the pollution on the right to life (art. 6 of the Covenant), was not raised by the parties or *proprio motu* by the Committee. As highlighted by the Committee in its general comment No. 36 (2019), the right to life should not be interpreted narrowly; moreover, it encompasses the right to enjoy a life with dignity.[2] In that same general comment, and in its Views on *Portillo Cáceres et al. v. Paraguay*, the Committee affirmed that the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include degradation of the environment and the deprivation of the land, territories and resources of indigenous peoples.[3]

3. The Committee is not alone in having interpreted the right to a dignified life. For more than two decades, the Inter-American Court of Human Rights has pioneered the concept of *vida digna*, which extends the scope of the protection of the right to life beyond the right not to be deprived arbitrarily of life to encompass the right to have "access to the conditions that guarantee a dignified existence".[4] In other words, States must take the measures necessary to create an adequate normative framework to discourage any threat to the right to life[5] and to safeguard that right by protecting access to conditions guaranteeing a dignified life.[6] Indigenous communities' right to a decent life was developed by the Court in *Yakye Axa Indigenous Community v. Paraguay*, wherein it established a close connection between the right to life and economic, social and cultural rights.[7] This was reaffirmed by the Court in its Advisory Opinion on the environment and human rights.[8] Crucially, the fact that States have an obligation to ensure minimum living conditions to support human dignity means that the Court has found violations of the right to life even when no one has died.[9]

4. Although the authors of the communication at hand have not claimed a violation of their right to a dignified life, it is obvious that the State has breached that right in respect of the authors, some of whom are children.

[1] See also *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016).

[2] General comment No. 36 (2019), para. 3.

[3] Ibid., para. 26.

[4] Inter-American Court of Human Rights, *"Street Children" (Villagrán Morales et al.) v. Guatemala*, judgment of 19 November 1999, para. 144.

[5] Inter-American Court of Human Rights, *Luna López v. Honduras*, judgment of 10 October 2013, para. 138.

[6] Inter-American Court of Human Rights, *Cruz Sánchez et al. v. Peru*. judgment of 17 April 2015, para. 260.

[7] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, judgment of 17 June 2005, para. 163. See also the American Convention on Human Rights, art. 26.

[8] Advisory Opinion OC-23/17, 15 November 2017, para. 48.

[9] Jo M. Pasqualucci, "The right to a dignified life (*vida digna*): the integration of economic and social rights with civil and political rights in the inter-American human rights system", *Hastings International and Comparative Law Review*, vol. 31, No. 1 (2008), pp. 1–32.

5. First, as detailed by the authors and claimed before the domestic authorities, their health was critically affected by the extensive use of pesticides by extractive industries and the failure of the State to prevent the degradation of their health (paras. 2.8–2.10 of the Views). As was done in *Portillo Cáceres et al. v. Paraguay*, this should have been examined under article 6 of the Covenant. The argument that the current case is different is not relevant insofar as article 6 may be applicable even in absence of death.

6. Second, large-scale contamination not only destroys biodiversity, but also the natural resources that are not only a source of food but also the origin of ancestral cultural practices related to hunting, fishing, woodland foraging and Guaraní agroecology. The situation of extreme poverty in which the community lives, without electricity, drinking water, sanitation services or a health-care facility, is worsened by the destruction of its natural resources (para. 2.8 of the Views).

7. Some of these claims were presented by the authors and examined under article 27 of the Covenant, which is an important step. Nevertheless, we consider that the serious consequences of the massive use of pesticides are imperfectly covered by this provision. To quote the Inter-American Court of Human Rights, the task of the Committee should have been to assess whether the State authorities' inaction and failures:

> Generated conditions that worsened the difficulties of access to a decent life for the members of the … community and whether, in that context, it took appropriate positive measures to fulfil that obligation, taking into account the especially vulnerable situation in which they were placed, given their different manner of life (different worldview systems than those of Western culture, including their close relationship with the land) and their life aspirations, both individual and collective.[10]

8. Considering the facts presented by the authors, which have not been convincingly refuted by the State, there is no doubt that the outcome of this assessment would have led to a violation of article 6 of the Covenant.

[10] *Yakye Axa Indigenous Community v. Paraguay*, para. 163.

Annex II

[Original: English]

Joint opinion of Committee members Photini Pazartzis and Gentian Zyberi (partially dissenting)

1. The Committee has found that the information before it discloses a violation of articles 17 and 27 of the Covenant, read alone and in conjunction with article 2 (3) (para. 9 of the Views). We are in full agreement with the finding of a violation of article 17, read alone and in conjunction with article 2 (3), of the Covenant, given the State party's lack of due diligence in pursuing the criminal complaint submitted in October 2009 regarding the health problems experienced by the Campo Agua'ẽ indigenous community after every fumigation carried out without adequate environmental protection (paras. 2.11–2.26 of the Views) and the administrative complaint lodged, not long after, with the National Plant and Seed Quality and Health Service (SENAVE) relating to harm caused by the misuse of agrochemicals (paras. 2.27–2.29 of the Views).

2. The claim concerning the violation of article 27, however, should have been declared inadmissible by the Committee for non-exhaustion of domestic remedies or, alternatively, for not being sufficiently substantiated. The authors claim a violation of article 27 because of the loss of the necessary conditions to preserve the community's culture (para. 3.8 of the Views). From the information submitted to the Committee, however, it does not appear that they have exhausted all available domestic remedies.

3. Even if domestic remedies could be considered exhausted, as arguably generally subsumed under the claim concerning a violation of article 17, there is an additional problem concerning sufficient substantiation. The authors submit that the serious environmental damage caused by the fumigation has had severe repercussions amounting to a negation of the right to enjoy their culture (para. 8.5 of the Views). However, what seems established is that the authors' homes and school were within 10 metres of soyabean plantations and that the protective hedges required by law to avoid the negative effects of fumigation had not been planted (para. 2.14 of the Views). Notably, no (chemical) survey has been conducted in the community to collect water, blood and urine samples to determine whether the level of chemicals used for fumigation exceeded the maximum levels allowed (para. 2.15 of the Views) and their exact overall effect on the community.

4. In our view, based on the limited information before it, the Committee was not in a position to find a violation of article 27. That said, the State party has to address environmental and other complaints with the necessary due diligence and with adequate consideration for the rights of indigenous communities.[1]

[1] See, e.g., CCPR/C/PRY/CO/3, paras. 27–28; and CCPR/C/PRY/CO/4, paras. 44–45.