United Nations CCPR/C/140/D/3237/2018

International Covenant on Civil and Political Rights

Distr.: General
26 July 2024

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3237/2018*, **

Communication submitted by:	W.L.W. (represented by counsel, Hendrik Andries Strydom)
Alleged victim:	The author
State party:	South Africa
Date of communication:	18 April 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 20 November 2018 (not issued in document form)
Date of adoption of decision:	28 March 2024
Subject matter:	Discrimination on the basis of property
Procedural issues:	Exhaustion of domestic remedies; level of substantiation of claims; abuse of the right of submission
Substantive issues:	Discrimination on the grounds of property; right to an effective remedy
Articles of the Covenant:	2 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is W.L.W., a national of South Africa born in 1943. He claims that the State party has violated his rights under articles 2 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 28 November 2002. The author is represented by counsel.

Facts as submitted by the author

2.1 In 2002, the State party enacted the Mineral and Petroleum Resources Development Act, which changed the property rights regime regarding mineral rights in the State party. Under the previous regime, landowners who were holders of minerals rights on their land were entitled to prospect and mine mineral deposits on their land. The landowner also had the right to dispose of the right to the minerals on their land and cede that right to a third

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

party who would then become the holder of the mineral rights for that land, or alternatively the landowner could enter into a mineral lease, thereby granting consent to a third party to mine for minerals on his or her land, in return for the payment of royalties by the lessee. The landowner also had the right not to exploit the minerals on his or her land and to choose, for example, to enjoy the agricultural value and natural beauty of their land. However, with the entry into force of the Mineral and Petroleum Resources Development Act on 1 May 2004, mineral resources were regarded as common heritage of all the people in the State party, with the State party being the custodian thereof.

2.2 The author notes that under the Mineral and Petroleum Resources Development Act a "use it or lose it" principle was adopted, purportedly to provide equitable access to the mineral resources of the State party. This was achieved by the creation of what under the Act was defined as: (a) an "old order prospecting right", which is the right to prospect for minerals held by a person in terms of the legislation in force before the Act was adopted, who was exercising that right immediately before the Act entered into effect; (b) an "old order mining right", which was a right to mine held by a person in terms of the legislation in force before the Act was adopted, who was exercising that right immediately before the Act entered into effect; or (c) an "unused old order right", which is the case of the author, which was a right to minerals held by a person in terms of the legislation in force before the Act was adopted, who was not exercising that right by either prospecting or mining immediately before the Act entered into effect. The holders of old order prospecting rights and old order mining rights were granted a one-year or five-year transitionary period, respectively, to apply to the Department of Mineral Resources for the mineral rights granted in terms of the main provisions of the Mineral and Petroleum Resources Development Act to be converted. During the interim period, they could continue with the activities authorized under the legislation in force before the Act was adopted. For their part, the holders of so-called "unused old order mineral rights" had a one-year deadline to apply for mining or prospecting rights under the main provisions of the Act. The author argues that, consequently, the conversion process for holders of old order unused mineral rights differed from the conversion process that holders of old order prospecting or mining rights could follow. For financial and logistical reasons, it was easier for the holders of old order prospecting or mining rights to satisfy the requirements for conversion under the new legislation than it was for holders of unused older order mineral rights.

2.3 The author argues that the individuals most affected by the implementation of the Mineral and Petroleum Resources Development Act were holders of unused old order mineral rights. There was a significant burden on them, as they were required to invest substantial amounts of capital in order to conduct prospecting operations or establish an operating mine, and as a consequence, the possibility to apply for a conversion of the mineral rights within the one-year deadline stipulated in the Act became almost illusionary in practical terms. Consequently, not only did such holders lose their property in the form of their mineral rights, but they could also not cede the rights during the one-year transition period. The author argues that the implementation of the Act therefore clearly differentiated between holders of unused old order mineral rights and holders of old order prospecting and mining rights.

2.4 The author stresses that an unused old order mineral right thus ceased to exist upon the expiry of the one-year deadline for applications for conversion of the right, in accordance with the stipulations of the Mineral and Petroleum Resources Development Act. All mineral rights that were previously registered against title deeds were thus subsequently removed, under the Chief Registrar's Circular No. 11 of 2004. The only avenue available to former mineral rights owners after 2004 to recoup their losses was to prove that their property had been expropriated and to claim compensation from the State under the Act. This avenue was open to former old order rights holders until 2011.

2.5 As regards his individual circumstances, the author notes that on 21 February 2011, he entered into a cessionary contract signed between the Kerneels Greyling Trust and himself, under which he gained ownership of a farm – "The Cascade" – as well as of any right, title or interest in any claims or demands that the Trust could have against the State as a result of the dispossession by the State of any mineral rights. The Kerneels Greyling Trust had, prior to the cessionary contract, registered a right to royalties in respect of the mining of iron ore

deposits on the farm. However, by virtue of the Chief Registrar's Circular No. 11 of 2004, the right to royalties was removed from the title deed, and the author notes that it was this claim for compensation for removing the title deed to royalties that was ceded to him by the Trust in 2011.[1]

2.6 Between 2010 and 2011, claims for compensation for the alleged expropriation of property were submitted to the Department of Mineral Resources by around 250 old order mineral rights holders, one of whom was the author. These claims were rejected by the Department, mainly on the basis that the mineral rights had not been expropriated under the Mineral and Petroleum Resources Development Act.

2.7 The author notes that on 18 April 2013, the Constitutional Court rejected claims for compensation submitted by "Agri SA" – a commercial farming lobby group – on behalf of Sebenza Mining Pty Ltd in the case *Agri South Africa v. Minister for Minerals and Energy*. Sebenza was, like the author, a holder of unused old order mineral rights, and Agri SA claimed compensation on its behalf before the Constitutional Court on the basis that the company's rights had been expropriated. The author claims that the complaint by the lobby group was a test case brought collectively on behalf of a number of farmers for financial reasons due to the high cost of litigation. The author notes that he was not party to that litigation, but claims that he was connected with Agri SA through his membership in district and provincial farmers' associations that are affiliated with Agri SA. In its judgment, the Constitutional Court held that, under article 25 of the Constitution, in order for expropriation to be deemed to have taken place, the expropriated property must vest in the expropriating authority. The Constitutional Court noted, however, that the State had not acquired ownership of any mineral rights upon the entry into force of the Mineral and Petroleum Resources Development Act, and thus no expropriation had taken place. The author notes that in a minority opinion, some members of the Court found that acquisition by the State was not a requirement for expropriation, but this minority also dismissed the claim filed by the company stating that the Mineral and Petroleum Resources Development Act provided for "compensation in kind", that is, the right to apply for prospecting and mining rights within a transitionary period.

2.8 The author argues, in the light of the Constitutional Court's judgment, that any further attempt at individual recourse by him would be futile, as the Constitutional Court has adopted a concrete position on the matter, and consequently he has exhausted domestic remedies. The author concedes that the claims raised in *Agri South Africa v. Minister for Minerals and Energy* were based on expropriation, and were "not on the face of it" based on differential treatment regarding the way in which the Mineral and Petroleum Resources Development Act affects different holders of mineral rights as alleged in his complaint before the Committee. He argues that the judgment by the Constitutional Court was nonetheless based on an interpretation of article 25 of the Constitution, and that that interpretation was informed by the commitment to land reforms and reforms to bring about equitable access to natural resources, which had, prior to 1994, been skewed in the State party as a result of gross inequality in relation to wealth and land distribution. The author argues that because the basis upon which the Constitutional Court interpreted article 25 of the Constitution was informed by the imperative to rectify unequal ownership and exploitation of mineral resources due to racial discrimination, it is unlikely that a claim based on the difference in treatment between different categories of mineral rights holders resulting from the promulgation of the Mineral and Petroleum Resources Development Act would be successful.

Complaint

3.1 The author claims that the difference in the treatment of holders of rights to minerals who exercised their rights immediately prior to the Mineral and Petroleum Resources Development Act entering into effect and who, after conversion of their mineral rights, could continue to exploit the said rights, as compared to the position of holders of so-called unused old order mineral rights, such as the author, who found themselves for various reasons unable

[1] The author notes that the value of the royalties on the date that the Mineral and Petroleum Resources Development Act entered into effect was R575 million (approximately $30,392,585), and, in 2011, R751 million (approximately $39,695,359).

to apply for prospecting or mining rights under the Act and were therefore deprived of their property rights without compensation, amounts to discrimination on the basis of property in violation of articles 2 (1) and (2) and 26 of the Covenant. The author claims that the implementation of the Act ended up supporting holders rich in capital who could apply for a conversion under the Act but not holders who had no means of exploiting their unused mineral rights – thus discriminating between different kinds of rights holders in an arbitrary manner.

3.2 The author further claims that the State party has failed to comply with its obligations under article 2 (1) and (2) of the Covenant by putting in place a legislative regime in the form of the Mineral and Petroleum Resources Development Act that resulted in discriminatory treatment, which was neither necessary nor proportionate in order to pursue a legitimate aim under the Covenant. He additionally claims a violation of article 2 (3) of the Covenant, as he claims that the State party has failed to provide him with an effective remedy.

State party's observations on admissibility and the merits

4.1 On 8 July and 16 December 2019, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be found inadmissible for failure to exhaust domestic remedies and for failure to substantiate the claims for the purposes of admissibility.

4.2 The State party notes the author's argument that in the light of the Constitutional Court's findings in *Agri South Africa v. Minister for Minerals and Energy*, any attempt to bring a claim before the domestic courts would be unsuccessful. However, the State party argues that the said case before the Constitutional Court was based on a claim for compensation on the grounds of expropriation, whereas the claim raised before the Committee is one of alleged discrimination and differential treatment between different categories of mineral rights holders. It submits that the issue of alleged discrimination between holders of used old order mineral rights and unused old order mineral rights has not been examined by any domestic court and that domestic remedies have therefore not been exhausted.

4.3 The State party further argues that a procedure exists in terms of the Mineral and Petroleum Resources Development Act to submit claims of expropriation, an avenue expressly preserved in the *Agri SA* judgment by the Constitutional Court.[2] The State party argues that the Constitutional Court, in *Agri South Africa v. Minister for Minerals and Energy*, was at pains to emphasize that each individual case must be considered on its merits, and that the Court emphasized that claims for expropriation could be brought on the basis of item 12 of the transitional provisions of the Act.[3] The State party submits that in the present case, no

[2] The State party refers to paragraph 75 in *Agri South Africa v. Minister for Minerals and Energy* 2013 (4) SA 1 (CC), which reads: "It would, however, be inappropriate to decide definitively that expropriation is, in terms of the Mineral and Petroleum Resources Development Act, incapable of ever being established. Like the Supreme Court of Appeal, I accept that a case could be properly pleaded and argued, to demonstrate that expropriation did take place. That is the avenue that must be left open, particularly when regard is had to the express provision made for expropriation in item 12 of schedule II to the Mineral and Petroleum Resources Development Act."

[3] Item 12 of the transitional provisions of the Mineral and Petroleum Resources Development Act reads as follows:

Payment of compensation:

(1) Any person who can prove that his or her property has been expropriated in terms of any provision of this Act may claim compensation from the State.

(2) When claiming compensation a person must: (a) prove the extent and nature of actual loss and damage suffered by him or her; (b) indicate the current use of the property; (c) submit proof of ownership of such property; (d) give the history of acquisition of the property in question and the price paid for it; (e) detail the nature of such property; (f) prove the market value of the property and the manner in which such value was determined; and (g) indicate the extent of any State assistance and benefits received in respect of such property.

(3) In determining just and equitable compensation, all relevant factors must be taken into account, including, in addition to sections 25 (2) and 25 (3) of the Constitution: (a) the State's obligation to

facts are provided in the complaint by the author to demonstrate why the procedures for submitting a claim of expropriation were not followed.

4.4 The State party further submits that the complaint is also premature, in that the author elected to make an application for substantially the same relief as that in his claim to the Committee, before the Gauteng Division of the High Court, Pretoria, submitted in February 2014, which remains pending in that Court.[4] The State party notes that the author did not disclose this application to the High Court in his complaint before the Committee. The author launched an application in the High Court against four government departments on 3 February 2014, in which he claimed that the effect of the coming into force of the Mineral and Petroleum Resources Development Act had been to expropriate rights from him (and other landowners), in particular the right to sterilize the mineral rights[5] on or under his properties, or, insofar as exploitation of those minerals was permitted, the right to claim royalties from any person who exploited those minerals. The author claimed that these rights constituted property and that he was therefore entitled to compensation from the State for the expropriation of the said rights. The State party notes that the author's application was opposed by the four government departments cited by him. The respondent departments filed a detailed answering affidavit on 25 September 2014 opposing the relief claimed by the author. In terms of the Court rules, the author had the right to file a replying affidavit and to take steps to set the matter down for hearing by the High Court. However, the author took no further steps to pursue his application, but also did not withdraw the case, which accordingly remained pending in Pretoria High Court, and for which reason the State party also argues that the author has failed to exhaust domestic remedies.

4.5 The State party further submits that the author has failed to substantiate his claims for the purposes of admissibility by failing to provide sufficient information about his individual claim and instead placing emphasis on the general situation of mineral rights holders. As to the author's cessionary contract signed with the Kerneels Greyling Trust, the State party argues that the following matters are unknown: (a) whether prospecting activities were conducted in order to find iron ore deposits; (b) whether the Trust had wanted mining activities to be conducted on the farm; (c) whether the Trust had wanted to apply for prospecting or mining rights under the Mineral and Petroleum Resources Development Act; (d) in case the Trust had wanted to apply for prospecting or mining rights under the Act, the reason it was unable to do so; (e) the reasons why the Trust did not apply for compensation under the Act; (f) the reason for the delay between the mineral rights being removed in 2004, and the ceding of the right to claim compensation which only happened in 2011; (g) what amount the author paid for the right to claim compensation; and (h) any details regarding the author's claim for compensation with the Department of Mineral Resources.

4.6 As to the merits of the claim, the State party argues that necessary measures were taken in terms of the Mineral and Petroleum Resources Development Act to prevent any discriminatory consequences that may have resulted from the implementation of the Act in respect of holders of so-called "unused old order mineral rights" taking into account the transitional provisions of the Act which afforded holders of the said rights the exclusive right to apply for prospecting or mining rights under the Act within a year of the Act entering into force. The State party submits that to the extent that there is alleged discrimination or differential treatment of the holders of unused old order mineral rights in terms of the Mineral and Petroleum Resources Development Act, this is based on reasonable and objective criteria

redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources; (b) the State's obligation to bring about reforms to promote equitable access to all South Africa's natural resources; (c) the provisions of section 25 (8) of the Constitution; and (d) whether the person concerned will continue to benefit from the use of the property in question or not.

[4] The State party notes that in his affidavit before the High Court, the author states that he is the owner of two farms and that he has also obtained from other landowners claims related to the mineral rights located on their properties, and for which he is also bringing claims before the High Court. (It is unclear from the author's affidavit whether the Kerneels Greyling Trust cession agreement referred to in his complaint before the Committee is one of the claims included in the author's submissions to the High Court).

[5] That is, the right not to sell or exploit minerals.

which aim to achieve purposes that are legitimate under the Covenant. The State party emphasizes that the Constitutional Court, in *Agri SA*, described the context of the Act by noting that South Africa was very rich in minerals but that the architecture of the apartheid system had placed about 87 per cent of the land and the country's mineral resources in the hands of 13 per cent of the population. Consequently, white South Africans wielded real economic power, while the overwhelming majority of black South Africans were still identified with unemployment and abject poverty, as they were unable to benefit directly from the exploitation of mineral resources. To address that gross economic inequality, legislative measures had been taken to facilitate equitable access to opportunities in the mining industry. In that connection, the State party notes that one of the goals of the Mineral and Petroleum Resources Development Act, as stated in its preamble, is to "make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith". The State party also observes that in *Agri SA*, the Constitutional Court noted that the Act sought to address the injustices of the past in the economic sector in a more balanced way. It emphasized that the Act was designed to treat individual property rights with the fairness they deserved, and that for that reason, transitional arrangements had been put in place and had been designed to alleviate potential hardship and prevent expropriation.[6]

[6] The State party refers to the majority opinion in paragraphs 73 and 74 in *Agri South Africa v. Minister for Minerals and Energy*, which reads:

(Para. 73:) "The Mineral and Petroleum Resources Development Act constitutes a break through the barriers of exclusivity to equal opportunity and to the commanding heights of wealth generation, economic development and power. It seeks to address the injustices of the past in the economic sector of our country in a more balanced way, by treating individual property rights with the care, fairness and sensitivity they deserve."

(Para. 74:) "It is for this reason that the transitional arrangements exist and were so carefully designed to alleviate potential hardship and prevent expropriation. That the Mineral and Petroleum Resources Development Act does make provision for expropriation was, in my view, more of a cautious approach to provide for unforeseeable eventualities, than an acknowledgment or reinforcement of an accepted reality that the Act necessarily has signposts of expropriation."

The State party further notes that the Constitutional Court, in *Agri South Africa v. Minister for Minerals and Energy*, paras. 1–3, describes the context of the Mineral and Petroleum Resources Development Act in the following words:

(Para. 1:) "South Africa is not only a beauty to behold but also a geographically sizeable country and very rich in minerals. Regrettably, the architecture of the apartheid system placed about 87 per cent of the land and the mineral resources that lie in its belly in the hands of 13 per cent of the population. Consequently, white South Africans wield real economic power while the overwhelming majority of black South Africans are still identified with unemployment and abject poverty. For they were unable to benefit directly from the exploitation of our mineral resources by reason of their landlessness, exclusion and poverty. To address this gross economic inequality, legislative measures were taken to facilitate equitable access to opportunities in the mining industry.

(Para. 2:) That legislative intervention was in the form of the Mineral and Petroleum Resources Development Act. Its commencement had the effect of freezing the ability to sell, lease or cede unused old order rights until they were converted into prospecting or mining rights with the written consent of the Minister for Minerals and Energy. It also had the deliberate and immediate effect of abolishing the entitlement to sterilize mineral rights, otherwise known as the entitlement not to sell or exploit minerals. This ought to come as no surprise in a country with a progressive Constitution, a high unemployment rate and a yawning gap between the rich and the poor which could be addressed partly through the optimal exploitation of its rich mineral and petroleum resources, to boost economic growth.

(Para. 3:) The inability of mineral rights holders to sterilize those rights, sell, lease or cede them whenever they wanted to, as before, and the extinction, after the prescribed periods, of the hitherto permanent and exclusive rights to determine who would exploit the minerals, caused grave dissatisfaction, particularly among major landowners like the applicant's members. They believed that the commencement of the Mineral and Petroleum Resources Development Act had the immediate effect of expropriating mineral rights. Hence this application."

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

5.1 On 6 April 2020, the author submitted his comments on the State party's observations. He maintains that the communication is admissible and that the complaint reveals a violation of his rights under articles 2 and 26 of the Covenant.

5.2 The author notes the State party's submission that the claim for compensation ceded to him by the Kerneels Greyling Trust is materially different from the discrimination-based claims relied upon in the complaint before the Committee. The author argues that "the royalties issue is a concrete illustration of the damage suffered" by him as a result of his lack of access to an effective remedy directly related to the discriminatory treatment of holders of unused old order mineral rights under the Mineral and Petroleum Resources Development Act.

5.3 The author notes the State party's information on his application before the Gauteng Division of the High Court. He confirms that he did submit an application before the High Court in 2014, but did not proceed with the application on the advice of counsel who informed him that the Supreme Court of Appeal had reached a judgment in 2012 in another case, *Xtrata South Africa (Pty) Ltd. v. SFF Association*, which made the prospects of his application for compensation for deprivation of the right to receive royalties in terms of the so-called old order rights "impossible". This is because the High Court would have been bound by the judgment of the Supreme Court of Appeal. The author notes the State party's information that, as he has not withdrawn his application before the High Court, the application remains pending. He submits that it was not for him but for his then legal counsel to withdraw the matter formally, and that the said counsel did not do so in view of the cost; the author submits, however, that "this formality is immaterial and cannot be used to challenge the significance of the *Xtrata* judgment". He therefore reiterates his argument that it would be futile for him to seek compensation for alleged expropriation under the Mineral and Petroleum Resources Development Act, in the light of the *Xtrata* and *Agri South Africa v. Minister for Minerals and Energy* judgments, decided by the Supreme Court of Appeal and the Constitutional Court, respectively.

5.4 The author reiterates his argument that his rights under articles 2 and 26 of the Covenant have been violated due to the discriminatory consequences of the implementation of the Mineral and Petroleum Resources Development Act in respect of holders of so-called unused old mineral rights. He argues that the State party has not addressed these claims in its observations and has not explained how the implementation of the Act was in pursuit of a legitimate aim, or that the measures taken were necessary and proportionate.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the author's claim that the alleged differential treatment between holders of so-called "old order prospecting or mining rights" and "unused old order (mining or prospecting) mineral rights" implemented upon the entry into force of the Mineral and Petroleum Resources Development Act amounted to a violation of his rights under articles 2 and 26 of the Covenant.

6.3 The Committee notes the State party's claim that the communication should be found inadmissible for failure to exhaust domestic remedies. It notes the author's argument that the Constitutional Court rejected claims for compensation in a test case brought by a lobby group on the basis of alleged expropriation of so-called unused old order mineral rights upon the entry into force of the Mineral and Petroleum Resources Development Act.[7] The Committee further notes the author's argument that, in the light of the decision of the Constitutional Court, any further attempt at individual recourse by him would be futile given the

[7] *Agri South Africa v. Minister for Minerals and Energy* 2013 (4) SA 1 (CC).

Constitutional Court's findings and its interpretation of article 25 of the Constitution, which he argues would render it unlikely that a claim based on the alleged differential treatment between different categories of mineral rights holders would be successful. The Committee notes, however, the State party's argument that the said case before the Constitutional Court was based on a claim of expropriation, while the claim raised by the author before the Committee is one of alleged discrimination and differential treatment between different categories of mineral rights holders, and that the claims raised by the author in the present communication have thus not been examined by any domestic court or authority. Additionally, it notes the State party's argument that the author also submitted an application, undisclosed to the Committee in his complaint, related to the alleged expropriation of his mineral rights before the Gauteng Division of the High Court, Pretoria, in February 2014, a case that at the time of submission of the State party's observations remained pending.

6.4 The Committee recalls its jurisprudence that although there is no obligation to exhaust domestic remedies if they objectively have no prospect of success, authors of communications must exercise due diligence in the pursuit of available remedies. Mere doubts or assumptions about the effectiveness of domestic remedies do not absolve authors of exhausting them.[8] The Committee also recalls that there is no obligation to exhaust domestic remedies – for example – where under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result.[9]

6.5 In the present case, the Committee notes the author's argument that the jurisprudence of the Constitutional Court and the Supreme Court of Appeal in respectively *Agri South Africa v. Minister for Minerals and Energy* and *Xtrata South Africa (Pty) Ltd. v. SFF Association* would render his claims unsuccessful. However, the Committee observes the State party's undisputed argument that the said cases concerned claims for compensation due to alleged expropriation of mineral rights, whereas the complaint submitted by the author to the Committee is a claim of alleged differential treatment in the implementation of the provisions of the Mineral and Petroleum Resources Development Act between different categories of mineral rights holders. The Committee notes the State party's undisputed submission that the said claims of alleged differential treatment were not raised in the cases before the Constitutional Court and the Supreme Court of Appeal, and the author has also provided no information about having made any attempt whatsoever to bring such a claim of alleged differential treatment before any domestic authority. Therefore, the Committee finds the author's claims under article 26, read alone and in conjunction with article 2 of the Covenant, to be inadmissible for failure to exhaust domestic remedies in accordance with article 5 (2) (b) of the Optional Protocol.

6.6 The Committee additionally notes the information from the State party that at the time of the submission of his complaint to the Committee, the author failed to disclose to the Committee that he had an expropriation claim pending before domestic courts. The Committee finds that, in the light of its conclusion under article 5 (2) (b) of the Optional Protocol, it is not necessary to examine the remainder of the inadmissibility claims submitted in the present case, however it emphasizes in this connection that an author is under an obligation to disclose all pertinent information related to a claim in a communication before the Committee, and that failure to do so may constitute an abuse of submission under article 3 of the Optional Protocol.[10]

[8] See, for example, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

[9] See, for example, *Länsman et al. v. Finland* (CCPR/C/49/D/511/1992), para. 6.3; *S.A. et al. v. Greece* (CCPR/C/121/D/2868/2016), para. 6.4; and *Gomaríz Valera v. Spain* (CCPR/C/84/D/1095/2002), para. 6.4.

[10] See, for example, *J.A.N.C. v. Colombia* (CCPR/C/129/D/2922/2016), para. 7.4.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.