



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2751/2016*, **

<i>Communication submitted by:</i>	Norma Portillo Cáceres (on her own behalf and that of her deceased brother, Rubén Portillo Cáceres), Hermenegilda Cáceres, Isabel Bordón Ramírez (on her own behalf and that of her minor son, Diego Rubén Portillo Bordón, son of the deceased), Ruperto Bordón Juárez, Ignacio Bordón Ramírez, Caferino Bordón Ramírez, José Bordón Ramírez, Alicia Aranda (on her own behalf and that of her minor son, Santiago Bordón Aranda) and Benito Milcíades Jara Silva (represented by Paraguayan Human Rights Coordinating Committee (CODEHUPY) and Base Investigaciones Sociales)
<i>Alleged victims:</i>	The authors, the two minor children and Rubén Portillo Cáceres
<i>State party:</i>	Paraguay
<i>Date of communication:</i>	30 September 2013
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 16 March 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Crop fumigation with agrochemicals and its impact on people's lives
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of cruel, inhuman or degrading treatment; right to freedom from arbitrary or unlawful interference with privacy, family or home

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following Committee members participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



Articles of the Covenant: 2 (3), 6, 7 and 17

Articles of the Optional Protocol: 5 (2) (b)

1. The authors of the communication, dated 30 September 2013, are Norma Portillo Cáceres, Hermenegilda Cáceres, Isabel Bordón Ramírez, Ruperto Bordón Juárez, Ignacio Bordón Ramírez, Caferino Bordón Ramírez, José Bordón Ramírez, Alicia Aranda and Benito Milcíades Jara Silva, all adult nationals of Paraguay, acting on their own behalf and on that of their deceased relative, Rubén Portillo Cáceres, and of two children, Diego Rubén Portillo Bordón (son of the deceased) and Santiago Bordón Aranda (nephew of the deceased). The authors claim that the State party has violated their rights under articles 6, 7 and 17 of the Covenant, read alone and in conjunction with article 2 (3). 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

Context: Fumigation with agrochemicals on neighbouring industrial farms

2.1 The authors, who belong to two families brought together by the marriage of one of the authors, Isabel Bordón Ramírez, and Rubén Portillo Cáceres, now deceased, are campesinos engaged in family farming for their own consumption and for sale.

2.2 The authors live in the settlement of Colonia Yerutí (Canindeyú Department, Curuguaty District), which was established in 1991 on State-owned land that had been distributed to campesinos under the agrarian reform programme. The settlement is managed by the Institute of Rural and Land Development, which is the lead agency for the country's policy on land access. In 2011, Yerutí was home to no more than approximately 400 people owing to emigration prompted by the lack of decent living conditions (poor access to public services, repeated crop fumigation with toxic agrochemicals and the increasing contamination of waterways in the area).

2.3 Colonia Yerutí is located in one of the areas that has seen the biggest expansion of agribusinesses. It is surrounded by what used to be cattle ranches that, since 2005, have been used solely for the extensive mechanized cultivation of genetically modified soybeans. The authors' homes are located on the south-eastern border of Colonia Yerutí and adjoin industrial farms located both inside and outside the settlement. These large plantations, on which crops are heavily fumigated using agrochemicals dispersed by tractor or light aircraft, have systematically infringed domestic environmental laws. Specifically, soybeans are sown right up to the edges of public pathways, in breach of domestic law, which establishes that, when pesticides are to be used on crops grown along inhabited local roads, protective hedges composed of dense foliage at least 5 metres wide and 2 metres high must be planted. If there are no such hedges, the law stipulates that pesticides should not be used within 50 metres of adjacent roads.¹ In addition, the industrial farms have planted soybeans on the land leading right up to the authors' homes, in violation of domestic law, which 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.² These industrial farms do not leave the required 100-metre buffer zone around rivers, streams, sources and lakes³ either, and they rinse out their agrochemical tanks in the streams.

2.4 The failure of the State to fulfil its obligations in the area of authorization and oversight has been cited as a justification for these agribusinesses to have acted in the way that they did. The Ministry of the Environment, as the body tasked with formulating, coordinating and implementing environmental policies, is also responsible for granting environmental permits and checking that such farms have those permits and are following the applicable management plans.⁴ The National Plant and Seed Quality and Health Service

¹ Decree No. 2048/04 on protective hedges along roads.

² Decision No. 485/03 on protective hedges near inhabited areas.

³ Decree No. 18831/86 on measures to protect waterways and water sources.

⁴ Environmental Impact Assessment Act No. 294/93 requires industrial farms to conduct environmental impact studies, comply with the relevant environmental management plan and hold an environmental

is responsible for the registration and oversight of the purchase and sale of agrochemicals and for ensuring that farms use products authorized by a technical adviser registered with the Service and that they maintain the required hedges and buffer zones. The Service is also responsible for overseeing how crop dusting is carried out.⁵ In addition, the Ministry of Agriculture and Livestock is responsible for agrarian policy and for preserving natural resources and the environment. The Institute of Rural and Land Development is in charge of policies on rural settlements and well-being and is responsible for preventing illegal activities, such as the sale of plots of land for soybean production to persons who do not qualify as agrarian reform beneficiaries.

Contamination in Colonia Yerutí resulting in the death of Mr. Portillo Cáceres and the poisoning of the authors

2.5 The large-scale use of toxic agrochemicals has had severe impacts on the authors' living conditions, livelihoods and health. Specifically, their use has contaminated water resources and aquifers, making it impossible to use the Yerutí and Kuairû streams, in which dead fish have appeared, and causing the loss of fruit trees, the death of various farm animals and severe crop damage.

2.6 Since around 2005, when the adjacent agribusinesses began to use mechanized production techniques, the authors have experienced a range of physical symptoms during and after the fumigations carried out in the course of the planting season for soybean crops. These symptoms include nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions. Both of the dirt tracks that connect the settlement with the main paved road cross large expanses of fields in which there is no adequate protection at any point. Consequently, local inhabitants who need to reach the main road are exposed to toxic agrochemicals. Every year during the soybean planting season, the local inhabitants have lodged complaints with various ministerial, administrative and judicial authorities (including the Ministry of Agriculture and Livestock, the Ministry of the Environment, the Institute of Rural and Land Development, the National Plant and Seed Quality and Health Service and the criminal prosecutor's office in Curuguaty); they have never received a reply.

2.7 On 3 January 2011, Mr. Portillo Cáceres, a 26-year-old campesino, began to experience vomiting, diarrhoea, fever and general discomfort. Weeks before, festering sores had appeared in his mouth and on his face and fingers. On 6 January 2011, his condition worsened and he was taken to the settlement's health facility, where he received treatment for the nausea and vomiting. When his condition did not improve – he was very pale and weak and unable to stand up – his relatives managed to arrange for transportation to take him to the district hospital in Curuguaty, more than four hours away.⁶ Mr. Portillo Cáceres died en route. At the hospital, the doctor who was on duty tried to revive him, but to no avail.

2.8 Between 8 and 14 January 2011, 22 other inhabitants of Colonia Yerutí, including the authors and the 2 children, were hospitalized after experiencing similar symptoms. The director of the hospital telephoned various institutions, including the Ministry of the Environment and the National Plant and Seed Quality and Health Service, to notify them of the symptoms exhibited by the authors and of the death of Mr. Portillo Cáceres.

permit. See also Environmental Offences Act No. 716/96, which makes non-compliance with legal obligations regarding environmental impact mitigation measures a punishable offence.

⁵ Act No. 3742/2009 on the oversight of phytosanitary products for agricultural use and Act No. 123/91 on new phytosanitary standards.

⁶ In order to travel to the hospital in Curuguaty, inhabitants depend on the goodwill of neighbours with vehicles to agree to make the trip, as the settlement's health facility does not have an ambulance and there is no public transportation.

Domestic remedies sought following the death of Mr. Portillo Cáceres and the poisoning of members of the community

Criminal complaint

2.9 On 13 January 2011, the authors lodged a complaint with the district prosecutor's office in Curuguaty regarding his death and their poisoning. Environmental Crime Unit No. 1 notified the criminal court of the opening of criminal case file No. 60/2011, which was labelled "Verification of alleged breach of environmental standards and poisoning".

2.10 That same day, the criminal prosecutor's office notified the Curuguaty police station and the local station in Campo Agua'e so that they could investigate the owners of the soybean plantations surrounding the settlement. The local station provided the names of various owners and tenants who cultivate between 17 and 170 hectares of soybeans in Colonia Yerufí.

2.11 Also on that day, technicians from the Environmental Crimes Unit and from the National Plant and Seed Quality and Health Service carried out an inspection of the settlement during which they collected samples from the well at the authors' home; the results showed the presence of banned agrochemicals.⁷

2.12 On 14 January 2011, the Ministry of the Environment inspected two soybean producers located next to the authors' farms but outside the settlement⁸ and found that they did not maintain a buffer zone, did not hold an environmental permit and were applying toxic agrochemicals without an agrochemical certificate or the services of a technical adviser.⁹

2.13 On 14 March 2011, in relation to criminal case file No. 60/2011, the Public Prosecution Service brought initial charges of breach of environmental law against seven residents of Colonia Yerufí.

2.14 On 14 September 2011, the Public Prosecution Service brought criminal charges against those seven individuals. The preliminary hearing scheduled for 20 September 2011 was suspended for procedural reasons. The proceedings remained stalled until 9 May 2012, when Norma Portillo Cáceres requested a status update on the case. The judge called a preliminary hearing for 29 May 2012, but it did not take place because the parties were not notified.

2.15 The preliminary hearing was held on 25 June 2013. The defence argued that the defendants' farms were much smaller than the large adjacent plantations named in the investigation, that the fumigation of their crops took place on a much smaller scale than was the case of the larger properties and that the agrochemicals they used could not, therefore, have reached the authors' farms. The Public Prosecution Service withdrew the charges and requested a stay of the proceedings on the grounds of a lack of evidence. On 31 July 2013, the Office of the Attorney General signed the notice of a stay of proceedings and requested that 22 additional pieces of evidence (witness statements, laboratory test reports, the defendants' criminal and police records and Mr. Portillo Cáceres's autopsy report) be collected within one year (the period covered by the stay order). On 3 September 2013, the criminal court in Curuguaty stayed the proceedings against the seven defendants.

2.16 Some of the evidence requested by the prosecutor was not collected, however. The autopsy was never conducted, even though it was requested on four occasions for the purpose of determining whether Mr. Cáceres's internal organs bore traces of agrochemicals

⁷ Aldrin and lindane (a pesticide and an insecticide that have been banned in all their forms and uses since 24 May 1993 owing to their high toxicity for humans and the environment); and endosulfan (an insecticide that was the subject of a call for a worldwide ban by the Review Committee of the Stockholm Convention on Persistent Organic Pollutants in 2008). In November 2010, the State party suspended the registration and importation of endosulfan, banned its use in flower and fruit production and phased in a ban on its use in industrial farming over a two-year period.

⁸ Cónдор Agrícola S.A. and/or KLM S.A., and Hermanos Galhera Agrovalle del Sol S.A. and/or Emmerson Shimmin.

⁹ Report of the Ministry of the Environment, 24 January 2011.

that would link his death to repeated exposure to the spraying and to contaminated water, soil and food.¹⁰ The authors' medical histories were not obtained either, and the results of their blood and urine tests were not included in the case file. Furthermore, the owners and managers of the two large industrial farms adjacent to the patients' homes were not charged with any criminal offence.

Remedy of amparo

2.17 On 14 January 2011, Norma Portillo Cáceres filed an application for a writ of *amparo* against four government agencies (Ministry of Agriculture and Livestock, the National Plant and Seed Quality and Health Service, Ministry of the Environment and the Institute of Rural and Land Development) with the aim of obtaining protection for the environment and the health of all the inhabitants of Yerutí. According to her application, the State had failed in its duty to provide protection, inasmuch as it was the State which had established the settlement and had sold the complainants their farms, and State agencies were the ones that had allowed Colonia Yerutí to become surrounded by industrial soybean producers that were committing all manner of environmental offences with impunity. In the application, the parties contended that the State's lack of oversight of agricultural production and its failure to suspend prohibited activities and to apply sanctions enabled producers to operate without environmental permits and to fumigate their crops without establishing the statutory buffer zone. They also argued that the lack of oversight of the tenancy and ownership of plots within the settlement led to the transfer of land to individuals who were not entitled to use it to grow soybeans. The complainants alleged that the right to life and the rights of the inhabitants to live in a healthy environment, to adequate food, to water, to health and to quality of life – all of which are rights enshrined in the Constitution – had been violated.

2.18 That same day, Criminal Court No. 9 in Asunción admitted the application¹¹ and requested the entities named in the application to submit a report. The Ministry of Agriculture and Livestock argued that there was insufficient evidence to support the charges and stressed the responsibility of the other three entities. The National Plant and Seed Quality and Health Service replied that it had been to the area to collect water samples. The Ministry of the Environment described the actions it had taken in the case and acknowledged its role in the lack of oversight.¹² The Institute of Rural and Land Development did not respond to the request.

2.19 In a decision of 28 January 2011, Criminal Court No. 9 in Asunción stated that it did not have territorial jurisdiction¹³ and referred the case to the District Court of Curuguaty. This was the same court that the authors had approached initially, but the staff of that court had refused to process the application for *amparo*, stating that it should be filed in the capital because it involved State institutions.

2.20 On 15 April 2011, the District Court of Curuguaty dismissed the application in respect of the Institute of Rural and Land Development and the Ministry of Agriculture and Livestock on the grounds that they are not responsible for overseeing compliance with safety standards for the use of phytosanitary products. It partially admitted the application in respect of the National Plant and Seed Quality and Health Service and the Ministry of the Environment. The District Court noted in its decision that not only had the Ministry accepted its responsibility in the matter but, by failing to discharge its duties, it had also allowed serious physical harm to come to the population of Colonia Yerutí as a result of the

¹⁰ The prosecutor requested the criminal court to order an autopsy on 15 January 2011, 14 February 2011 and 18 May 2011. A fourth autopsy request was made on 31 July 2013 by the Office of the Attorney General.

¹¹ Case No. 17-3-1-2011-74.

¹² The Ministry of the Environment stated that it “acknowledges budgetary and human-resources limitations in terms of its oversight capacity ... fully concurs with the complainants regarding the need to improve State oversight and intervention mechanisms” and goes so far as to speak of “accepting responsibility”.

¹³ Article 566 of the Code of Civil Procedure: “Any court of first instance in the jurisdiction where an act, omission or unlawful threat has had or may have an impact is competent to rule on an application for *amparo*.”

crop fumigation practices of agricultural producers. In the District Court's view, "the State failed to honour its obligation or discharge its duty to protect the right to health, which is a fundamental human right". Furthermore, it stated that the situation "also violates the constitutional right to protection by the State of the rights to physical and psychological integrity, to quality of life and to live in a healthy and ecologically sound environment".

2.21 Concerning the National Plant and Seed Quality and Health Service, the court noted that "it is obvious that there has been no oversight of the use of agricultural phytosanitary products", that "there has been no enforcement of the buffer zone requirement" and that "the National Plant and Seed Quality and Health Service is not performing the functions set forth in its founding legislation with regard to large agricultural producers, which are fumigating their crops with agrochemicals without any oversight by the National Plant and Seed Quality and Health Service and are seriously harming the health of the inhabitants of Yeruti". The District Court went on to say that "the actions in question become arbitrary or illegitimate the moment that agricultural producers fumigate their large fields without oversight, care or safeguards of any kind, thereby directly affecting the surrounding population". In its decision, the court acknowledged the urgency of the situation, which posed an ongoing risk of serious health problems for the population. Lastly, it noted that "there are no regular legal channels for seeking protection for the right that has been violated, since it is the very institutions responsible for environmental and phytosanitary policies that have been derelict".

2.22 Accordingly, the District Court ordered both institutions to carry out their assigned functions in the settlement, which were "to plan, implement and oversee the relevant policies, protect environmental resources and ensure that buffer zones or protective hedges separate the areas where agricultural phytosanitary products are used from human settlements, schools, health-care facilities, places of worship, public spaces and waterways in general".

2.23 The authors submit that no steps have been taken to enforce the decision, that it has not been implemented and that fumigation has continued without any environmental protection measures having been put in place.

The complaint

3.1 The authors claim that the State party has failed in its duty to provide protection inasmuch as it has not exercised due diligence and has allowed the extensive spraying of toxic agrochemicals on the industrial farms adjacent to their homes, in breach of the law. They claim that these violations are being committed by public officials in the exercise of their functions. As a consequence, Mr. Portillo Cáceres died while exhibiting symptoms of agrochemical poisoning, and the authors have suffered from serious health problems.

3.2 The authors submit that the case illustrates a situation already observed by other United Nations treaty bodies and non-treaty mechanisms. The Committee on Economic, Social and Cultural Rights noted with concern that: "the expansion of soybean cultivation has fostered the indiscriminate use of toxic agrochemicals, leading to deaths and illnesses" and urged the State party to "adopt urgent measures to ensure that soybean cultivation does not undermine the ability of the population to exercise the rights recognized by the Covenant".¹⁴ The Committee on the Elimination of Discrimination against Women has also expressed its concern that the misuse of toxic agrochemicals can negatively impact the health of rural women and requested the State party to undertake a comprehensive study on the probable negative causes of the misuse of toxic agrochemicals in agriculture "in order to implement the necessary measures to eradicate their impact on the health of women and their children".¹⁵ The Committee on the Rights of the Child has expressed its concern about "the negative consequences of agro-toxic fumigation faced by peasant families" and recommended that the State party implement all the necessary measures "to tackle the extremely negative consequences of agro-toxic fumigation in rural communities".¹⁶ The

¹⁴ E/C.12/PRY/CO/3, paras. 16 and 27.

¹⁵ CEDAW/C/PRY/CO/6, paras. 32 and 33.

¹⁶ CRC/C/PRY/CO/3, paras. 50 and 51 (d).

Special Rapporteur on extreme poverty and human rights noted, during her mission to Paraguay, that the expansion of soybean monoculture and the abuse of agrochemicals are seriously endangering the health of indigenous and campesino communities and that the State has taken absolutely no action to protect the right to health of those affected, thereby putting at grave risk the lives of the people whose homes are surrounded by soybean plantations, especially in Canindejú.¹⁷

3.3 The authors maintain that they are exempt from the requirement regarding the exhaustion of domestic remedies because the State agencies that were found to be responsible have not complied with the court's instructions pursuant to the writ of *amparo*. In addition, the criminal investigation has been open since 12 January 2011 and has been unreasonably prolonged, as it took two years to set the date for a preliminary hearing, in violation of the laws of criminal procedure, which provide that the date for such a hearing must be set within 20 days. Furthermore, the proceedings were stayed in order to give the Public Prosecution Service additional time to collect the evidence that had not been gathered during the investigation. As of the date of the communication's submission, the evidence had not been gathered and the investigation was at a standstill. The authors cite Views of the Committee in which it established that the passage of five years during which the authorities did not put the suspected offenders on trial constituted an unjustified delay¹⁸ and in which it found that, as five years had passed without the authorities' having provided a possible date for the conclusion of an investigation, domestic remedies had been unreasonably prolonged.¹⁹ The authors also mention a case in which the Committee found that it was not precluded from considering a communication because there had been a delay of over three years for the adjudication of a case at first instance.²⁰

3.4 The authors contend that the events that are the subject of the present case constitute a violation of articles 6, 7 and 17 of the Covenant, read alone and in conjunction with article 2 (3).

3.5 With respect to the violation of the right to life and to physical integrity, the authors contend that they fell ill and that Mr. Portillo Cáceres died because of the crop spraying being carried out without any oversight by the State. They go on to say that the State party failed to discharge its duty to protect their lives and physical integrity because it was not diligent in enforcing environmental standards and laws. The authors also claim that their right to a life with dignity has been violated owing to the circumstances in which they live, as they are surrounded by uncontrolled crop dusting that has a detrimental impact on their daily lives and has resulted in their being poisoned, since it pollutes the waterways in which they fish and the well water that they drink, has ruined the crops that they use for food and has caused the death of their farm animals.

3.6 The authors maintain that the right recognized under article 17 of the Covenant has been violated as a result of the environmental pollution caused by the industrial farms bordering their land, which the State party has done nothing whatsoever to check. They argue that paragraph 8 of general comment No. 31 (2004), on the nature of the general legal obligation imposed on States parties to the Covenant, should be interpreted as meaning that the sphere of protection afforded by article 17 includes protection of the home and private life from environmental pollution caused by the actions of third parties when those actions constitute unlawful or arbitrary interference with their privacy or family. The authors therefore claim that 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 the home or privacy or family life of other persons.

3.7 The authors maintain that this interpretation is not unknown in international human rights law; they recall the settled case law of the European Court of Human Rights which indicates that, although the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) does not contain a provision that protects environmental rights, a violation of the right to privacy and family

¹⁷ A/HRC/20/25/Add.2, paras. 47 and 48.

¹⁸ See, for example, *Vicente et al. v. Colombia* (CCPR/C/60/D/612/1995).

¹⁹ *Blanco Domínguez v. Paraguay* (CCPR/C/104/D/1828/2008).

²⁰ *Fillastre and Bizoarn v. Bolivia* (CCPR/C/43/D/336/1988).

life exists when an environmental hazard becomes so great that it leads to a significant reduction in a person's ability to enjoy his or her home, privacy and family life. Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely.²¹ The authors affirm that article 17 of the Covenant should be interpreted in an evolving manner in the light of the European Court's jurisprudence inasmuch as, in the case at hand, there is sufficient evidence of a causal relationship between the extensive spraying of pesticides, the contamination of drinking water with banned agrochemicals, the poisoning of the authors and the death of Mr. Portillo Cáceres.

3.8 Lastly, the authors claim a violation of their right to an effective legal remedy on the grounds that the environmental pollution which poisoned the authors and led to the death of Mr. Portillo Cáceres has not been the object of an effective, appropriate, impartial and diligent investigation and that the parties responsible for that pollution have not been punished.

3.9 Specifically, the authors state that the remedies that they sought have been ineffective because, even though an on-site inspection was carried out which provided sufficient evidence for the presumption that there was a direct link between the infringement of environmental laws and the pollution that caused them harm: (a) it took the authorities two years to convene a preliminary hearing in a case in which some producers – but not the two largest ones – were implicated; (b) in the end, a stay of proceedings was ordered; (c) the Public Prosecution Service failed to avail itself of the procedural opportunity given to it to gather evidence; (d) neither the clinical histories of the authors nor the results of their blood and urine tests were entered in the file on the investigation; (e) impunity prevails and the pollution continues; and (f) the writ of *amparo* which they were granted was never enforced.

3.10 The authors request the following measures of redress: (a) a thorough, effective investigation and the punishment of the responsible parties; (b) the adoption of the necessary legislative, administrative and other measures to effectively ensure that similar events do not occur in the future; and (c) full and appropriate reparation.

State party's observations on admissibility and on the merits

4.1 In its observations dated 19 September 2018, the State party argues that the communication is inadmissible *ratione materiae* because the Covenant does not recognize environmental rights.²² The State party adds that a connection is lacking between the events in question – relating to supposed infractions of Paraguayan administrative regulations concerning the use of agrochemicals – and the rights enshrined in the Covenant.

4.2 The State party also argues that the communication is inadmissible because domestic remedies have not been exhausted, since the events in question are the subject of an open criminal case. The State party reports that the case has been reopened, that charges were brought on 30 September 2017 against four of the seven persons who were initially charged²³ and that a preliminary hearing had been scheduled for 27 September 2018. The State party maintains that, if the defendants are convicted, the authors will receive satisfaction with respect to their rights. The State party maintains that there has been no unjustified prolongation of the proceedings, inasmuch as: (a) it has acted in accordance with the principle of objectivity and has respected the right to the presumption of innocence; (b) the case is a complicated one, as the investigation has had to cover a large number of

²¹ The authors cite paragraph 51 of *López Ostra v. Spain*, judgment of 9 December 1994; paragraphs 68 and 69 of *Fadeyeva v. Russia*, final judgment of 30 November 2005; and paragraph 105 of *Dubetska and Others v. Ukraine*, judgment of 10 February 2011.

²² As jurisprudence regarding inadmissibility *ratione materiae*, the State party cites the Committee's decision in the case of *K.B. v. Norway* (communication No. 53/1979) and paragraph 6.7 of the decision of the Committee against Torture in the case of *Roitman Rosenmann v. Spain* (CAT/C/28/D/176/2000).

²³ The charges were non-compliance with certain provisions of the Environmental Impact Assessment Act (Act No. 294/93) and the Agricultural Phytosanitary Products Act (Act No. 3742/09).

persons and evidence of a technical nature is involved; and (c) the proceedings have been interrupted on a number of occasions because of the defendants' failure to appear in court.

4.3 The State party also asserts that other remedies are available to the authors under civil law that would afford a broader and more immediate solution, such as civil possessory actions for protecting their private property, securing the cessation of unlawful actions and claiming the appropriate compensation for damages.²⁴

4.4 With regard to the merits, the State party argues that it has not violated articles 6 or 7 of the Covenant because the authors have not established that they were poisoned by pesticides, since the blood and urine tests yielded values that are "within normal parameters and did not indicate the presence of residual toxins in their bodies".²⁵ The State party goes on to say that lindane is the only active ingredient that was found in a concentration above the allowable threshold (0.03 mg/kg, rather than 0.01 mg/kg). The State party also emphasizes that the authors mentioned having fevers, but fever is actually not one of the usual symptoms of lindane poisoning.

4.5 As for the supposed violation of article 17 of the Covenant, the State party contends that, as there are environmental protection laws in place, along with oversight bodies authorized to apply sanctions, any failure to maintain supervision of such activities is unlikely. The State party also indicates that the reported events constitute an isolated case in which administrative sanctions have been applied to the two large agribusinesses located on land bordering the authors' domiciles. Administrative proceedings were held and, by decision No. 217/2018 of 13 April in the case of Cónдор S.A. and by decision No. 250/2018 of 26 April in the case of Hermanos Galhera Agrovalle del Sol S.A. and/or Emmerson Shimmin, they were fined the equivalent of 5,000 minimum daily wages and an order was issued for the regular supervision and monitoring of their activities.

4.6 With regard to the supposed violation of article 2 (3) of the Covenant, the State party indicates that a criminal investigation was conducted which identified persons who are growing soybeans in Colonia Yerutí and who may be subject to sanctions once the criminal proceedings have been brought to a conclusion.

Authors' comments on the State party's submission

5.1 In comments dated 23 December 2018, the authors point out that they are not claiming a violation of a right to a healthy environment but rather are protesting the invasion of their privacy and family life, the violation of their right to life and to physical integrity and the absence of an effective remedy.²⁶

5.2 As to the supposed lack of a link between the events in question and the Covenant, the authors assert that the State party is presenting a restrictive misinterpretation of its obligations in relation to the right to life, which, in addition to the negative obligation of not taking any direct action that would deprive a person of his or her life, include the positive obligation of guaranteeing decent living conditions. There is therefore a need to analyse the merits of the communication.

5.3 With respect to the supposed reopening of the criminal proceedings in 2017, the authors say that they only learned of this decision when they read the State party's observations in the case. They submit that this is a "desperate attempt to avert a finding of responsibility on the State's part which is entirely lacking in serious intent", as

²⁴ The State party indicates that article 1944 of the Civil Code provides that: "Anyone who interferes with the possession of another or deprives another thereof commits an unlawful act The person whose possession has been interfered with may sue the person responsible ... to secure the cessation of those acts and, if the former fears further interference, the possessor may also petition that the future commission of such acts be prohibited."

²⁵ The State party does not provide any substantiating documentation.

²⁶ The authors cite the Committee's Views in *Nell Toussaint v. Canada* to support their argument that the communication should be found to be admissible. They note that, in those Views, the Committee stated that "... the author has explained that she does not claim a violation of her right to health but of her right to life, arguing that the State party failed to fulfil its positive obligation to protect her right to life" (CCPR/C/123/D/2348/2014, para. 10.9).

demonstrated by the fact that the preliminary hearing that was to take place in September 2018 was not held. Thus, more than seven years after the events in question, they still have not obtained justice.

5.4 On the subject of civil possessory actions, the authors state that such actions are not an effective avenue for seeking the protection of their right to life and integrity from violations caused by the ineffective response of the authorities. The authors add that, in accordance with the Brasilia Regulations Regarding Access to Justice for Vulnerable People, account should be taken of the vulnerable position of the campesinos residing in the remote rural settlement of Yerutí,²⁷ which hinders them from hiring and paying for a lawyer while risking incurring huge court costs if they were to lose a civil lawsuit. They also argue that, even though there are environmental laws in place, the judges in the civil justice system that was created to defend individuals' private property rights are not under an obligation to consider principles of agrarian law or environmental law, and the State party does not have any specialized courts empowered to consider agricultural and environmental matters that would offer them a suitable legal avenue.

5.5 Regarding the merits of the communication, the authors again refer to the violations of the right to life and the right to physical integrity; they note that an agency of the State party determined that their wells were contaminated with agrochemicals and that another government office has listed the administrative offences committed by the firms located next to their farms. They affirm that, consequently, deliberate actions were taken by individuals which could have been averted by the State party and which caused the death of one campesino farmer and had a detrimental effect on the ability of other members of the community to exercise their rights to decent living conditions and to physical integrity.

5.6 The authors contend that, if the State does not seek to apply effective controls in order to avert the poisoning of foodstuffs, then it is jeopardizing the right to life. They go on to say that a healthy environment, timely high-quality health care and poison-free food are entailed in the right to life. The authors refer to general comment No. 36 as a basis for recalling 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", which "... may include degradation of the environment."²⁸ They emphasize that the right to life also "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death".²⁹

5.7 With respect to the violation of article 17 of the Covenant, the authors argue that the State party cannot shirk its responsibility simply by claiming that it has adopted environmental laws and has agencies in charge of enforcing environmental laws and regulations. The State's failure to enforce those laws and regulations is precisely what constitutes arbitrary interference with privacy, family and people's homes. The authors recall that waterways and crops have been contaminated and farm animals have been killed. They go on to say that all of these elements constitute part of their private and family life and their homes, which have been invaded. This situation could have been avoided if the State party had exercised due diligence in discharging its duty to provide protection.

5.8 In regard to the administrative proceedings initiated five years after the events in question,³⁰ the authors point out that, not only have they failed to result in any suspension of the spraying, but the administrative proceeding in respect of Hermanos Galhera Agrovalle del Sol S.A. and/or Emmerson Shimmin ended in the dismissal of the case and a finding that those parties bore no liability, following their submission of an application for

²⁷ The authors recall that it is extremely difficult for residents of Yerutí to gain access to public services, including those provided by the prosecutor's office and the courts, because there are absolutely no public transportation services. People seeking to enter or leave the community have to take one of two dirt tracks, which are 10 and 14 kilometres in length and become impassable when it rains, in order to reach the closest road and, even once they have done that, the nearest city – Curuguaty – is 20 kilometres away.

²⁸ General comment No. 36 (2018) on the right to life, para. 26.

²⁹ *Ibid.*, para. 3.

³⁰ The inspection request was dated 15 April 2016 and it took two years for a decision to be issued.

reconsideration on 23 May 2018. In a decision dated 24 September 2018, the Directorate of Legal Advisory Services of the Ministry of the Environment and Sustainable Development stated that it had “not been possible to conclusively determine the identity of the owner of the establishment that had been inspected by environmental authorities” and that “necessary information, such as the farm’s registration number, had not been available, nor had the farm’s coordinates been recorded, and there was therefore no precise information as to the identity of the physical or legal person who owned or rented the property in question”. Accordingly, by decision No. 116/18 of 10 October 2018, the Ministry had dismissed the case against the firm and Emmerson Shimmin. As for the administrative proceeding in respect of Cándor Agrícola S.A. and/or KLM S.A., the authors had requested a copy of the case file from the proper authorities but were not able to obtain it and so could not analyse its contents.

5.9 The authors assert that these events are not an isolated case, as indicated by the numerous international expressions of concern made on this subject. In addition to the other statements regarding such situations referred to earlier (see paragraph 3.2 above), they cite the report of the Special Rapporteur on the right to food on her mission to Paraguay, in which she requested the State party to establish an effective legal framework for environmental protection, including protection against the use of toxic agrochemical products, and to provide for appropriate sanctions for those who break the law and adequate compensation for the persons who are affected.³¹ They also cite the report of the Special Rapporteur on the rights of indigenous peoples on her mission to Paraguay, who observed that the country’s development model, which promotes rapid economic growth through mono-cropping, exacerbates existing environmental problems caused by transgenic crops and the use of pesticides. The Special Rapporteur therefore recommended that the State party undertake research into “the effects of the spraying of pesticides and other agrochemical products ... on people’s health and on the enjoyment of other human rights ... and adopt and implement legislation to regulate the use of such products”.³² In addition, the authors cite the concluding observations issued by the Committee on Economic, Social and Cultural Rights concerning the fourth periodic report of Paraguay, in which the Committee repeated its expression of concern regarding the adverse effects of extensive soybean cultivation, the indiscriminate use of toxic agrochemicals, contamination of the water supply and food insecurity. They also note that the Committee urged the State party to “take the measures needed to ensure that soybean cultivation does not undermine the enjoyment of economic, social and cultural rights, especially the right to a decent standard of living and to food, water and health”.³³ The authors furnish examples of cases in which people have died as a result of pesticide poisoning. Evangelista Peralgo, who was 28 years of age and lived in the indigenous settlement Campo Agua’e (located on the other side of the road across from the dirt tracks leading to Colonia Yerutí), was taken to the hospital when she was vomiting blood and died there. On 7 January 2003, Silvino Talavera, who was 11 years of age, also died after having been sprayed with toxic agrochemicals in the Department of Itapúa as he rode his bicycle along a secondary road that bordered cultivated fields.³⁴ The authors also say that two sisters died in 2014 after the cropland next to their house was sprayed and that 18 adults in their community fell ill.³⁵ They also refer to another indigenous community in Curuguaty that was harmed by the fumigation of crops in August 2017.³⁶

³¹ A/HRC/34/48/Add.2, para. 106 (d).

³² A/HRC/30/41/Add.1, paras. 48 and 83 (g).

³³ E/C.12/PRY/CO/4, para. 25.

³⁴ The authors cite Mesa de Concertación para el Desarrollo Rural Sostenible, *Informe de la Sociedad Civil sobre el Cumplimiento del PIDESC en el Paraguay 2000–2006*, Asunción, 2007, p. 22, available at: <https://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/DESC-Paraguay.pdf>.

³⁵ The authors forward a newspaper article which is available at: <https://www.ultimahora.com/dos-ninas-fallecieron-curuguaty-causa-agrotoxicos-segun-la-fnc-n814364.html>.

³⁶ The authors forward a newspaper article entitled “Comunidad indígena afectada por fumigación de sojales en Curuguaty” (Indigenous community harmed by fumigation of soybean fields in Curuguaty), available at: <https://www.ultimahora.com/comunidad-indigena-afectada-fumigacion-sojales-curuguaty-n1101022.html>.

5.10 Finally, with regard to the violation of article 2 (3) of the Covenant, read in conjunction with articles 6, 7 and 17, the authors state that: (a) an autopsy was never performed on Mr. Portillo Cáceres; (b) no criminal investigation was conducted in respect of the owners of the adjacent agribusinesses that were found to have committed administrative violations; (c) none of the remedies which they have sought has led to a rectification of the absence of protective hedges to shield areas from the spraying, which continues, or to the establishment of specific measures for cleaning and purifying nearby waterways; and (d) they have not received redress for the harm that these violations continue to cause.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee takes note of the State party's argument that the communication is inadmissible *ratione materiae* because environmental rights are not provided for in the Covenant. The Committee also notes, however, that the authors have stated that they are not claiming a violation of the right to a healthy environment but rather violations of their right to life, physical integrity, privacy, family life and an effective remedy and that they are doing so on the grounds that the State party has not honoured its positive obligation to protect those rights, which, in the case at hand, would entail enforcing environmental standards. The Committee considers, therefore, that article 3 of the Optional Protocol does not constitute an obstacle to a finding of admissibility in respect of the present communication.

6.4 The Committee takes note of the State party's argument concerning a failure to exhaust domestic remedies, since there is an ongoing criminal investigation into the death of Mr. Portillo Cáceres and the poisoning of the authors as a consequence of the infringement of environmental laws. The Committee recalls that the purpose of requiring that domestic remedies be exhausted is to give States parties the opportunity to perform their duty to protect and guarantee Covenant rights.³⁷ Nevertheless, pursuant to article 5 (2) (b) of the Optional Protocol, domestic remedies must not be unreasonably prolonged. In view of the fact that over eight years have passed since the events in question, that the criminal case has not made significant progress and that the State party has failed to justify the substantial delay, the Committee considers that the investigation has been unreasonably prolonged and that it may therefore consider the present communication.³⁸

6.5 Furthermore, the Committee takes note of the State party's argument that the authors have failed to exhaust all available domestic remedies because they have not brought a civil possessory action. However, the Committee takes note of the authors' assertion that this kind of action would not have constituted an effective legal avenue for seeking the protection of their right to life and integrity from violations caused by the ineffective response of the authorities. The Committee recalls that, in keeping with article 5 (2) (b) of the Optional Protocol, the authors must only make use of all those avenues that offer them a reasonable prospect of redress,³⁹ that relate to the alleged violation and that offer redress that would be proportionate to the harm done. The Committee also observes that the court which considered the application for a writ of *amparo* stated that: "There are no regular

³⁷ Settled jurisprudence since the Committee's Views in *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

³⁸ Regarding the issue of unreasonable delays, see *Abdoellaevna v. The Netherlands* (CCPR/C/125/D/2498/2014), para. 6.3, and *Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 11.3.

³⁹ *Colamarco Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

legal channels for seeking protection for the right that has been violated, since it is the very institutions responsible for environmental and phytosanitary policies that have been derelict.” Accordingly, the Committee finds that a civil possessory action would not have been an effective remedy in the present case and finds that the communication is admissible under article 5 (2) (b) of the Optional Protocol.

6.6 The communication having met all the requirements for admissibility and the claims of the authors based on articles 2 (3), 6, 7 and 17 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 an examination of the communication on the merits.

Consideration of the merits

7.1 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.

7.2 The Committee takes note of the authors’ claim that the events in this case constitute a violation by omission of article 6 of the Covenant in respect of both Mr. Portillo Cáceres, who died while exhibiting symptoms of pesticide poisoning, and the authors themselves owing to the State party’s failure to perform its duty to provide protection. They allege that their right to a life with dignity has been violated as a result of ongoing fumigations that have a negative impact on their daily lives, pollute the waterways in which they fish, the wells from which they drink, and the crops and farm animals which are their source of food, all of which resulted in their poisoning and required their subsequent hospitalization since they were suffering from the same symptoms as Mr. Portillo Cáceres (nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions). The Committee also notes that the State party maintains that the authors have not shown that they were poisoned by pesticides and that lindane is the only toxic agrochemical that was found in a concentration above the allowable threshold. However, the Committee observes that the report of the Public Prosecution Service on the results of the analysis of the samples of water taken from the well used by Mr. Portillo Cáceres’s household indicated the presence of aldrin and lindane, which are a pesticide and an insecticide that are banned under Paraguayan law. In addition, the Committee observes that no autopsy was ever performed on Mr. Portillo Cáceres, even though one was requested on four different occasions for the purpose of determining whether there were traces of agrochemicals in his internal organs; that the authors’ clinical histories and the results of their blood and urine tests were never entered into the case file; and that the State party has not produced any evidence to show that the analyses of the blood and urine samples yielded values that were within the normal ranges. The Committee recalls that the reason why the burden of proof does not rest solely on the shoulders of the authors of a communication is, in particular, because the author and the State party do not always have equal access to evidence; in fact, it is frequently the case that the State party alone has access to the necessary information. In instances in which clarification hinges on information to which only the State party has access, the Committee may consider the allegations to be founded if the State party does not refute them by providing satisfactory evidence and explanations.⁴⁰

7.3 The Committee observes that a narrow interpretation does not adequately convey the full concept of the right to life and that States must take positive action to protect that right.⁴¹ The Committee recalls its general comment No. 36, in which it has established that the right to life also concerns the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.⁴² States parties should take all appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity, and these conditions include environmental pollution.⁴³ In

⁴⁰ *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

⁴¹ *Nell Toussaint v. Canada*, para. 11.3.

⁴² General comment No. 36, para. 3.

⁴³ *Ibid.*, para. 26.

that respect, the Committee observes that the State party is also bound by the Stockholm Convention on Persistent Organic Pollutants. Furthermore, the Committee recalls that States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in loss of life.⁴⁴

7.4 The Committee also takes note of developments in other international tribunals that have recognized the existence of an undeniable link between the protection of the environment and the realization of human rights and that have established that environmental degradation can adversely affect the effective enjoyment of the right to life.⁴⁵ Thus, severe environmental degradation has given rise to findings of a violation of the right to life.⁴⁶

7.5 In the present case, the Committee is of the view that heavily spraying the area in question with toxic agrochemicals – an action which has been amply documented⁴⁷ – poses a reasonably foreseeable threat to the authors’ lives given that such large-scale fumigation has contaminated the rivers in which the authors fish, the well water they drink and the fruit trees, crops and farm animals that are their source of food. The authors were hospitalized due to poisoning, and the State party has not adduced evidence of any kind to demonstrate that the results of the blood and urine tests were within the normal range, nor has an alternative explanation been given for the events in question. Furthermore, Mr. Portillo Cáceres died with no explanation from the State party, as an autopsy was never conducted. The Committee also observes that, for at least the five years preceding the events in this case, a number of government authorities had been alerted to the fumigations and to their impact on the inhabitants of Colonia Yerutí (para. 2.6). Despite these reports and complaints, the State party took no action. In addition, by imposing administrative sanctions on two of the producers (para. 4.5), the State party acknowledged that these activities posed a danger, a fact that is not affected by the stay in proceedings ordered in one of these cases on the grounds of formal errors in the action taken by the environmental authorities (para. 5.8). Furthermore, the Ministry of the Environment further acknowledged its responsibility for the lack of oversight. Finally, in granting the application for a writ of *amparo*, the District Court clearly stated that “the State failed to honour its obligation or discharge its duty to protect”. Despite the foregoing, the fumigation continued. Consequently, in view of the acute poisoning suffered by the authors, as acknowledged in the *amparo* decision of 2011 (paras. 2.20 and 2.21), and of the death of Mr. Portillo Cáceres, which has never been explained by the State party, the Committee concludes that the information before it discloses a violation of article 6 of the Covenant in the cases of Mr. Portillo Cáceres and the authors of the present communication.

7.6 Having found a violation of article 6 of the Covenant, the Committee does not deem it necessary to address the question as to whether the same actions also constitute a violation of article 7.

7.7 With respect to the alleged violation of article 17 of the Covenant, the Committee takes note of the authors’ claim that farm animals, crops, fruit trees, water resources and fish and crops constitute components of their privacy, family life and homes, and that the State party’s failure to enforce environmental standards therefore constitutes an instance of arbitrary interference with their privacy, family and home. The authors also contend that the scope of the protection to be afforded under article 17 of the Covenant encompasses protection from environmental pollution and that the State therefore bears *culpa in vigilando* for having failed to place controls upon an agricultural activity that is creating

⁴⁴ Ibid., para. 7.

⁴⁵ Inter-American Court of Human Rights, *Advisory opinion OC-23/17* of 15 November 2017 on the environment and human rights, series A, No. 23, paras. 47, 108 ff.; and *Kawas-Fernández v. Honduras*, merits, reparations and costs, judgment of 3 April 2009, series C, No. 196, para. 148. See also the African Commission on Human and Peoples’ Rights, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*, communication No. 155/96, 27 October 2001, and general comment No. 36, para. 3.

⁴⁶ European Court of Human Rights, *Özel and Others v. Turkey*, judgment of 17 November 2015, paras. 170–171 and 200; *Budayeva and Others v. Russia*, judgment of 20 March 2008, paras. 128–130, 133 and 159; *Öneryıldız v. Turkey*, judgment of 30 November 2004, paras. 71, 89–90 and 118.

⁴⁷ See footnotes 14–17 and 32–34.

pollution. The Committee also takes note of the fact that, according to the State party, administrative sanctions have been imposed on the companies in question and that criminal charges have been laid against four individuals, without which there would be no violation of article 17 of the Covenant. The Committee observes, however, that, ultimately, these administrative proceedings were stayed, owing to formal errors in the action taken by the environmental authorities (para. 5.8), and the illegal spraying of crops has not stopped.

7.8 The Committee observes that the authors, who are campesinos from the same family engaged in family farming on lands owned by the State and administered by a State entity (para. 2.2), depend on their crops, fruit trees, livestock, fishing and water resources for their livelihoods. This has not been contested by the State party. The Committee recalls that the term “home” is to be understood to indicate the place where a person resides or carries out his or her usual occupation.⁴⁸ Further, the Committee considers that the aforementioned elements constitute components of the way of life of the authors, who have a special attachment to and dependency on the land,⁴⁹ and that these elements can be considered to fall under the scope of protection of article 17 of the Covenant.⁵⁰ In addition, the Committee considers that article 17 should not be understood as being limited to the refraining from arbitrary interference, but rather as also covering the obligation of States parties to adopt positive measures that are needed to ensure the effective exercise of this right, in the light of interference by the State authorities and physical or legal persons.⁵¹ In the present case, the Committee observes that the State party did not place appropriate controls upon illegal activities that were creating pollution. The State party’s failure to discharge its duty to protect, as acknowledged in the *amparo* decision (paras. 2.20 and 2.21), made it possible for large-scale fumigations to continue, in contravention of internal regulations, including the use of prohibited agrochemicals, which caused not only the pollution of well water in the authors’ homes, as recognized by the Public Prosecution Service, but also the death of fish and livestock and the loss of crops and fruit trees on the land on which the authors live and grow crops, elements that constitute components of the authors’ private life, family and home. The Committee observes that the State party has not provided any alternative explanation in that regard. When pollution has direct repercussions on the right to one’s private and family life and home, and the adverse consequences of that pollution are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home.⁵² 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.

7.9 Finally, the Committee takes note of the authors’ claim that the events at issue in this case also constitute a violation of article 2 (3) of the Covenant, read in conjunction with articles 6 and 17, because an effective, appropriate, impartial and diligent investigation into the environmental pollution that poisoned the authors and led to the death of Mr. Portillo Cáceres was not carried out. In particular, they point out that neither the clinical histories of the authors nor the results of their blood and urine tests were ever entered into the case file; that the suspects were not found guilty and the pollution continues; that the owners of the adjacent agribusinesses that committed the violations – violations which were established as such in the administrative proceedings – have not been subject to any criminal investigation; that the writ of *amparo* which was granted to them has never been put into effect; that none of the remedies that they have sought has led to a rectification of the absence of protective hedges to shield areas from the spraying, which continues; and that they have not received redress. The Committee also observes that, according to the State

⁴⁸ General comment No. 16 (1998) on the right to privacy, para. 5.

⁴⁹ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 1.

⁵⁰ *Hopu and Bessert v. France* (CCPR/C/60/D/549/1993/Rev.1), para. 10.3.

⁵¹ General comment No. 16, para. 1. See also European Court of Human Rights, *Cordella and Others v. Italy*, judgment of 24 January 2019, para. 158.

⁵² European Court of Human Rights, *López Ostra v. Spain*, judgment of 9 December 1994, paras. 51, 55 and 58; *Fadeyeva v. Russia*, paras. 68–70, 89, 92 and 134 and *Cordella and Others v. Italy*, paras. 173–174.

party, suspects have been identified who may be penalized once the criminal proceedings reach their conclusion. Nonetheless, more than eight years after the events described in the present communication, the investigations have made no substantive progress and have not led to the redress of the harm suffered by the authors, in violation of article 2 (3), read in conjunction with articles 6 and 17 of the Covenant.

8. The Human Rights 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 6 and 17 of the Covenant, read alone and in conjunction with article 2 (3).

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which entails full reparation for the persons whose rights have been violated. The State party should therefore: (a) undertake an effective, thorough investigation into the events in question; (b) impose criminal and administrative penalties on all the parties responsible for the events in the present case; (c) make full reparation, including adequate compensation, to the authors for the harm they have suffered. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. 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 a violation has been established, the Committee wishes to receive information from the State party within 180 days about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to disseminate them widely, particularly in a daily newspaper with a large circulation in the Department of Canindeyú.
