



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Eighty-seventh session
10 – 28 July 2006

DECISION

Communication No. 1331/2004

Submitted by: Ms. Susila Malani Dahanayake and 41 other Sri Lankan citizens (represented by the NGO “International Public Interest Defenders”)

Alleged victim: The authors

State Party: Sri Lanka

Date of communication: 21 November 2004 (initial submission)

Document references: Special Rapporteur’s rule 97 decision, transmitted to the State party on 9 February 2005 (not issued in document form)

Date of adoption of decision: 25 July 2006

* Made public by decision of the Human Rights Committee.

Subject matter: expropriation, preliminary impact assessments

Procedural issues: exhaustion of domestic remedies, same matter

Substantive issues: equal protection of the law, right to receive information, unlawful interference with the home

Articles of the Covenant: 19, paragraph 2, and 26

Articles of the Optional Protocol: 2 and 5, paragraph 2 (a) and (b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL
 PROTOCOL TO THE INTERNATIONAL COVENANT ON
 CIVIL AND POLITICAL RIGHTS
 Eighty-seventh session

concerning

Communication No. 1331/2004*

<u>Submitted by:</u>	Ms. Susila Malani Dahanayake and 41 other Sri Lankan citizens (represented by the NGO “International Public Interest Defenders”)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Sri Lanka
<u>Date of communication:</u>	21 November 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 July 2006,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The authors of the communication are the following: Susila Malani Dahanayake, A.A Hema Mangalika, P.M Koralage, A.K Maginona, Arambawelage Weerapala, Jayawathie Abeygoonewardene, M.P Gamage Premadasa, Tiranagama Dayaratne, G. D Dayawanse Devapriya, W. Don Leelawathie, Geeganage Nandawathie, Brahamanage Chandrasiri, Veditantirige Kusuma, T.L Sarath Chandrasiri, D Liyanage Dhanapala, Geeganage Gunadasa,

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O’Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

The text of an individual opinion co-signed by Committee members Mr. Walter Kälin and Mr. Hipólito Solari Yrigoyen is appended to the present document.

Geeganage Karunadasa, A. Vithanage Wickramapala, Meepe Gamage Kulasekera, T Salamon Appuhamy (deceased), Meepe Gamage Paulis, M.V Mahindaratne, A.A Sunanda, S.A. Wanigaratne, C Kumudini Liyanage, M.T Isawathie (deceased), M.G Sarath Wickramaratne, S.K.A Ariyawathie, H.G Kulawathie, M.V Chandradasa, D Dayawathie, Karunawathie Samarasekera, Podinona Samarasekera, G Karunadasa, H.G.D Asika Shyamali, Maliaspakoralage Ariyawathie, N.V Samithra, M Vithanage Dharmasena, Meepe Gamage Piyaratne, G Sirisena Silva, Buddhadasa Ihalawaithana, and M.V Punyawathie (deceased after the communication was submitted), all Sri Lankan citizens currently residing in Sri Lanka. They claim to be victims of violations by Sri Lanka¹ of articles 6, 19, paragraph 2, and 26, of the International Covenant on Civil and Political Rights. The authors are represented by an NGO, the International Public Interest Defenders.

1.2 Two requests for interim measures that the State party should refrain from evicting the authors and their families from their land and homes or “involuntarily resettling” them, were denied by the Special Rapporteur on New Communications.

Factual background

2.1 At the time of submission of the communication, the authors were landowners and long term residents of the villages of Ihalagoda, Walahanduwa, Niyagama, Ambagahawila, Pinnaduwa, Godawatte, Narawala and Ankokkawala, in the area of Akmeemana, in the southern part of Sri Lanka. It is alleged that they also represent the other affected persons of the above villages. For many generations they and those they represent lived in this area without disturbance.

2.2 In the early to mid-1990s, the Road Development Authority (RDA)² proposed the construction of, and prepared possible trajectory for, a 128 km long expressway from Colombo, in the western part, to Matara, in the southern part of Sri Lanka. Under the National Environmental Act No.47 of 1980, as amended by Acts No.56 of 1988 and 53 of 2000 (NEA), the proposed expressway was required to undergo an Environmental Impact Assessment (EIA) process, in order to analyse and assess the environmental, social, financial and agricultural impact. The EIA process included “scoping”³ of the project, the identification and study of alternatives, the publication of an EIA report in respect of the project, a period for public comment, and technical review and approval by the Central Environmental Authority (CEA)⁴.

¹ The International Covenant on Civil and Political Rights and the Optional Protocol entered in force for the State party respectively on 11 September 1980 and 3 January 1998.

² The RDA was established under section 2 of the Road Development Authority Act No.73 of 1981 as amended by Act No.5 of 1988, and is empowered under the said Act *inter alia* to undertake the execution of road development projects and schemes as may be approved by the Government.

³ The “scoping” involves discussions with all those affected by the project.

⁴ The CEA was established under the National Environmental Act (NEA) No.47 of 1980 as amended by Acts No.56 of 1988 and 53 of 2000. Its primary function is to help establish environmental standards and to enforce the provisions of the NEA including the provisions pertaining to Environmental Impact Assessments (EIA) described in more detail below.

The University of Moratuwa, Sri Lanka, prepared the EIA report on the expressway project. Two possible trajectories, namely the “Combined Trace” and “Original Trace” were considered in the EIA report for the Expressway. None of these trajectories ran through the authors’ properties or villages. Of the two, the EIA report recommended the “Combined Trace” as the most appropriate financial, social, agricultural and environmentally sound alternative.

2.3 On 23 July 1999, the CEA informed the RDA, which had proposed the project, of its decision to approve the expressway, subject to a number of conditions, including that the expressway should be routed in such a manner as to avoid running through the Koggala and Madu Ganga wetlands, and that the final route should minimise relocation of individuals. Any amendment of the project required a new approval. The conditions could have been satisfied by shifting the “Combined Trace” by 200 meters, on a distance of about 1 kilometre, or by building it on concrete pillars, as the EIA report recommended.

2.4 Instead of complying with the conditions of the CEA, the RDA established a completely new route, called the “Final Trace”. This route affects almost ten times as many individuals as the “Combined Trace” in the same area. It runs through a large number of properties, including the authors’ houses and land, which will be compulsorily acquired, while the authors will be subjected to involuntary resettlement. The authors were neither sent an official written notice of the change of the proposed route, nor given any opportunity to comment on it. They became aware of it only in March 2000, when officers of the Survey Department entered some of the authors’ properties.

2.5 The “Final Trace”, as an alternative roadway, was not examined in any EIA report. Any amendment of this nature would have required new approval under the NEA, and under the terms of the CEA’s letter of approval. Neither the “Final Trace” nor the altered sections of the expressway route were approved afresh, as required by law. Therefore, the authors are being deprived of their property without a hearing and without the benefit of the legal provisions for assessment, comment and hearing contained in the NEA and its regulations. On or about 15 August 2002, several surveyors together with RDA officials and armed police officers, invaded the authors’ land and properties and proceeded, despite protests, illegally and forcibly to survey their lands. They threatened, intimidated and harassed the authors and caused damage to some of their property.

2.6 The authors claim to have exhausted domestic remedies. On 29 July and 19 August 2002, the authors filed two writ applications in the Court of Appeal seeking a writ of certiorari to quash the RDAs decision to alter the route of the proposed expressway over the authors’ lands. On 8 October 2002, the Court of Appeal appointed a committee composed of three retired Justices of the Supreme Court to look into several issues of the case. The report of the committee concluded that the revisions complained of could only be considered feasible and desirable if the procedure set out in the NEA, and Regulation 17 relating to revisions, were complied with. It also considered that the authors should be afforded an opportunity to comment on the “Final Trace”.

2.7 On 30 May 2003, the Court of Appeal dismissed the authors’ applications, on the ground that the obligation to society as a whole prevailed over the obligation to a group of individuals who were adversely affected by the construction of the expressway.

2.8 On 20 January 2004, the Supreme Court recognised that the authors' fundamental rights guaranteed under Article 12(1) of the Constitution and the principles of natural justice had been infringed. However, it only granted compensation and costs instead of ordering to stop the implementation of the illegal revisions⁵. The authors have not collected the compensation deposited by the State authorities, as they do not consider compensation an appropriate relief for the loss of their human rights. They submit that the only appropriate remedy for an imminent violation of guaranteed fundamental rights is an order restraining such conduct.

2.9 On 15 January 2005, the Project Director of the Southern Transport Development Project announced in a newspaper that from 17 January onward, the remaining homes on the route of the expressway (including the authors') would be taken over, and that a Court order would be issued for eviction in the event of resistance. On 18 and 25 January 2005, some of the authors' properties were surveyed, despite inexistent or late notice, under an alleged court order, which was not shown to them. Officials illegally entered the homes of some of the authors.

The complaint

3.1 The authors, who are all affected by the final route of the expressway, claim a violation of article 26 as they were not afforded an opportunity to participate in the decision-making, the "scoping" or EIA process, and they were not given notice and a hearing, while those affected by the Combined Trace and Original Trace were. All those living along the "Combined Trace" were part of a Social Impact Assessment. No such opportunity was given to those living along the "Final Trace" and more specifically to the authors. In addition, as the Supreme Court found a violation of Article 12(1) of the Constitution which is the equivalent of the right guaranteed by article 26, but only granted compensation, it violated their right to equality by failing to stop the violation of the authors' rights.

3.2 The authors claim that the right to life guaranteed by Article 6 of the Covenant has been interpreted by other treaty bodies, and also by the Human Rights Committee, in a broad manner, and consequently claim a violation of their right to life, which includes a right to a healthy environment. To ascertain what would be the environmental effects of this project would require

⁵ The Supreme Court held that "the deviations proposed by the RDA were alterations requiring CEA approval after compliance with the prescribed procedures and the principles of natural justice, that despite the lack of such approval, the refusal of relief by way of writ, in the exercise of the Court's discretion was justified; but that the Appellants ought to have been compensated for the infringement of their rights under Article 12(1) and the principles of natural justice. To that extent, the appeals are allowed and the order of the Court of Appeal is varied." It therefore granted and issued "an order in the nature of a writ of *Mandamus* directing the CEA to require the RDA to pay, and directing the RDA to pay, each of the Appellants compensation in a sum of Rs. 75,000. That will be in addition to the compensation payable by the State under the Land Acquisition Act, and in terms of the CEA approval and the compensation package referred to by the Respondents in their written submissions. To preclude further delays, misunderstandings and allegations of victimization, [it] further directed that the Appellants shall have the right to accept such compensation and to hand over possession of their lands without such prejudice to their rights of appeal in respect of the quantum of compensation."

studies in regard to which the affected parties have a legal right to be heard before their homes and livelihood are radically affected. In the present case, no such studies, EIAs and hearings required by law were conducted.

3.3 The authors claim to be the victims of a violation of article 19, paragraph 2, as they were not informed that they might be displaced. The RDA's decision to deviate the Final Trace over the authors' lands has placed them in a situation where they would lose their properties without the benefit of an EIA or a hearing. Since no EIA was done for the Final Trace, the authors have been denied their statutory right to information concerning environmental impacts.

3.4 The authors claim that the same matter has not been submitted for examination to another procedure of international investigation or settlement. They indicate that the deviations of the "Final Trace" were referred, by other affected victims, to the Asian Development Bank's inspection procedures, as the Bank was a co-financer of the project, with a view to examining whether this deviation involved possible violations of its own policies on resettlement and environment. The goal of these procedures was not to ensure that human rights guaranteed by the Covenant are protected. The authors point out that they are not parties to these proceedings.

State party's submissions on the admissibility and merits

4.1 On 8 April 2005, the State party challenged the admissibility of the communication. As a general comment, it states that the Southern Expressway project is a major development project undertaken by the State party for the benefit of the country and the people as a whole, in which considerable time and resources have already been invested. It challenges the admissibility because the authors have not exhausted domestic remedies, and notes that they did not avail themselves of the jurisdiction of the Supreme Court, under article 126 of the Constitution, to seek relief for alleged violations of their fundamental rights. The Constitution gives exclusive jurisdiction to the Supreme Court to hear and determine any allegation of a violation of fundamental rights. Although the Supreme Court found a violation of fundamental rights in the authors' case, the State party did not get an opportunity to defend its actions on this ground, because the authors did not invoke a violation of their fundamental rights before that Court. The authors have sought relief from the National Human Rights Commission, and no decision has been made on their case yet. It therefore considers that the only remedy the authors have sought in relation to their claims of a violation of their fundamental rights is before the National Human Rights Commission, where their case is still pending.

4.2 In addition, the State party claims that other affected parties have referred the matter to the Asian Development Bank's inspection procedures, with a view to seeking relief on the basis of the Bank's policies on resettlement and environment, which constitutes another procedure of international investigation or settlement, within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.

4.3 On 7 September 2005, the State party commented on the merits of the communication. It reiterates that the Southern Development Project is vital for the development of Sri Lanka. According to established procedures, funding for projects of this nature is released only after the

donors are satisfied that the implementation of the project does not result in violations of human and environmental rights.

4.4 The State party refers to the domestic proceedings before the Court of Appeal and Supreme Court, and to the written submissions which were filed on behalf of the RDA and the CEA, and which clearly define the position of the State party. In these submissions, it was argued that the RDA had not “altered” the project as approved by the CEA, in the sense of the relevant regulations. In the absence of such “alterations”, there was no requirement for a supplementary EIA. In addition, it was argued that even if there had been an alteration, a supplementary EIA would not have been necessary in this case, because the altered project was situated within the same “corridor” (project area) as the one that had been studied in the EIA report. The State party argues that both the Court of Appeal and Supreme Court recognized that this development project is of immense value to the people of Sri Lanka, and decided on the continuance of the project under the final tracing. In arriving at this conclusion, the Courts duly considered the interests and claims of all stakeholders, especially of those who claimed that they would be affected.

4.5 The State party claims that although a few petitioners objected to the proposed project, the majority of the people in the area was in favour of it, and even insisted that it be expedited. The expressway would provide the much needed road infrastructure to the southern parts of the country, which have remained under-developed. It would connect them to Colombo, the capital, and thereby be a catalyst for an accelerated socio-economic development of the area. In the aftermath of the Tsunami disaster, which primarily affected the Southern coastal belt, catalysts of this nature are urgently needed in the reconstruction effort.

4.6 On the authors’ claims under articles 26, 6 and 19, paragraph 2, of the Covenant, that the RDA decided on the final routing without affording an opportunity for the persons concerned to be heard under an inquiry procedure of the CEA, the State party argues that the reason why the RDA revised the route were concerns expressed by the CEA. The revisions were made to incorporate the concerns of the CEA, and with the understanding that this was the condition of the approval of the CEA. The “Final Trace” was formulated within the parameters established by the CEA. Since the revisions were made to address and minimise environmental concerns, no fresh approval was sought from the CEA.

4.7 By the time the authors filed court applications, it was far too late to consider new route alternatives, as this would have seriously impeded progress of the project. The Government had already taken steps to acquire land and paid compensation for the land acquired. It was not its intention to treat the authors in an unequal manner, to deprive them of their freedom of expression, or to interfere with their right to live in a healthy environment. The project was intended to bring development to the area and to improve the quality of life of the inhabitants of the area, including the authors.

4.8 On the authors’ claim that the Supreme Court should, instead of awarding compensation, have directed the RDA to seek a fresh approval from the CEA and to grant the authors an opportunity to be heard, the State party contends that the Supreme Court did not stop the continuation of the project, since it was considered that irreparable damage would be caused if it

did so. The Court, after considering all circumstances, deemed it just and equitable to award compensation to the authors, but allow the project to proceed. The Government has no power to direct the judiciary, which forms an independent pillar in the governance structure. It is bound to respect the judgments given by all competent courts in the State party.

4.9 The State party concludes that it is imperative that the project continue, in the larger interest of the country and its people. The communication involves issues on which the courts have, after careful considerations, come to definitive conclusions. They were of the view that a supplementary EIA was unnecessary, but that appropriate compensation should be given to the authors. Special steps have been taken according to law, to hold compensation inquiries, including to the benefit of the authors.

Author's comments on the admissibility and merits

5.1 On 17 November and 21 December 2005, the authors commented on the State party's submissions and reiterated their earlier claims. They indicate that the conditions formulated by the CEA, in its approval of 23 July 1999, included the following:

- move the route from the "Combined Trace" to the "Original Trace" near Weras Ganga/Bolgoda lake wetlands (condition IX)
- route the proposed expressway to avoid running through the Koggala and Madu Ganga Wetlands (condition X)
- route the final trajectory to minimise relocation of individuals (condition F1)
- obtain fresh approval in terms of Regulation 17(1)(a) in respect of any alterations that are intended to be made on the project (condition III)

The authors recall that their lands were not within the corridor which was studied in the EIA report. According to the authors, the costs of the three alternatives of the expressway in terms of housing are the following:

"Combined Trace": 622 houses "Original Trace": 938 houses "Final Trace": 1315 houses

The fact that the "Final Trace" has a higher housing displacement is a violation of condition F1 of the CEA's approval. Information on other costs and impacts of the three alternatives is not available.

5.2 On the State party's claim that the same matter has been submitted to another procedure of international investigation or settlement, the authors concede that they raised the matter with the Asian Development Bank, as it was one of the lending institutions for the project, which therefore had to comply with the guidelines and lending covenants of the Bank. The authors made a request to the Inspection Panel of the Bank to examine possible violations of the Bank's policies, provoked by the revision of the route. The Inspection Panel rejected the request. The authors continued to complain to the Bank, and the Safe Guard Panel of the Bank visited the area. Its report has not been transmitted to the authors. The matter was then referred to the

Banks' Office of the Special Project Facilitator, where the possibility of alternative solutions was explored. However, the process was concluded without the parties reaching an agreement to solve the problem. The authors then referred the issue to the Bank's Compliance Review Panel, which observed that for the areas where the two main revisions were made, an EIA should be made, as there were substantial grounds for arguing that the project became non-compliant when the "Final Trace" was chosen, as new areas not included in the 1999 EIA report were included in the project, and as it failed to reach the broader goals of an EIA process such as public consultation. This is the current view of the Asian Development Bank, which, in early 2005, sent a new request to the University of Moratuwa to prepare rapidly a supplementary EIA report for the "Final Trace". The authors claim that the inquiry conducted by the Bank's Panel does not constitute proceedings before another international instance within the meaning of article 5, paragraph 2(a). It is not a judicial or quasi-judicial forum and is merely an advisory mechanism for the Bank to ensure compliance with its own policies. Neither does it apply international law nor does it grant relief to applicants.

5.3 On the issue of non-exhaustion of domestic remedies, the authors maintain that they exhausted all domestic remedies, as their case was considered by the Supreme Court, which is the highest court in the State party. The Supreme Court dealt with the violation of the authors' fundamental rights guaranteed under article 12 (1) of the Constitution. Some authors also applied to the National Human Rights Commission, but no decision was made on the matter, and the authors subsequently filed applications in the Court of Appeal. On the argument that the authors did not invoke a violation of their fundamental rights in the domestic proceedings, they note that a petitioner cannot request the Court of Appeal to refer this matter to the Supreme Court. The Court of Appeal can do so if it believes that there is *prima facie* evidence of an infringement of fundamental rights by a party to the proceedings.

5.4 The authors indicate that the subject of this communication is the Supreme Court's failure to stop an imminent violation of equality before the law, although it had recognised an infringement of the authors' fundamental rights under article 12(1) of the Constitution.

5.5 The authors reject the State party's contention that the project enjoyed wide public support. They claim that the methods used by the RDA included threats and harassment, and provide accounts from some of the authors on the conduct of RDA officers. Some of them have been forced to hand over their property before payment of compensation, or are not satisfied with the assessed compensation. Others have been promised a 25% extra compensation if they vacated their properties before the given date, but have still not received the compensation. The authors add that the State party is manipulating their rights under the Resettlement Implementation Plan (RIP) of the RDA and the Asian Development Bank. The complete plan is not available to the authors although some extracts in English are available⁶. As a result, they remain unaware of their rights and entitlements under the RIP.

5.6 The authors indicate that the deadline for the completion of the land acquisition procedure was extended and finally set at 28 February 2005. They were forced to hand over their properties before receiving any compensation. Some of the authors' houses were taken without them being

⁶ The vast majority of the authors do not understand English.

given alternative housing or land, and the compensation paid is insufficient to acquire a suitable property or build a house. Most of the authors earned an income from cultivating their properties and have lost their income as a result of the resettlement.

5.7 As to the State party's contention that the authors filed their applications out of time, the authors indicate that the construction contract was signed only in January 2003, nearly two years after they applied to the National Human Rights Commission. At that time, the authors had already introduced court proceedings, and the report of the Committee of retired Supreme Court judges of October 2002 clearly indicated the need for a supplementary EIA report. In addition, very little land had been acquired at that time, and this was only in relation to the original routing. The loan of the Asian Development Bank did not become effective until October 2002.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies, because the authors have failed to invoke a violation of their fundamental rights before domestic courts, and because their application before the Human Rights Commission is still pending. The Committee notes that the authors brought their case to the State party's highest court, and that it addressed their claim from a fundamental rights violations perspective, and indeed found a violation of their right to equality. It concludes that the authors have exhausted domestic remedies and it is therefore not precluded from considering the communication on this ground.

6.3 As to the State party's contention that the authors filed a complaint under another procedure of international investigation or settlement, the Committee notes that the authors' complaints to the Asian Development Bank were not based on allegations of a violation of Covenant rights. The Committee thus considers that the procedure before the Asian Development Bank does not amount to another procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.

6.4 On the authors claim that they were victims of a violation of their right to life under article 6 because they were being deprived of a healthy environment, the Committee considers that the authors have not sufficiently substantiated this claim, for purposes of admissibility, under article 2 of the Optional Protocol.

6.5 On the authors' claim under article 26 of the Covenant, the Committee notes that the treatment they received, which was incompatible with the treatment they should have received under article 26, was found to be incompatible with article 12 (1) of the Constitution of Sri Lanka, which is the equivalent of article 26 of the Covenant. Moreover, they were afforded a remedy for that specific violation, in addition to the regular compensation they would receive for

the loss of their property, and which the Committee is not in a position to consider inadequate. Accordingly, the authors can no longer be considered victims within the meaning of article 1 of the Optional Protocol. Accordingly, the Committee finds this part of the communication inadmissible under article 1 of the Optional Protocol.

6.6 The Committee observes that no separate issue arises under article 19, paragraph 2, which is not already covered by the claim under article 26. It concludes that this claim is inadmissible for the same reasons.

7. The Human Rights Committee therefore decides:

- a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- b) That this decision shall be communicated to the State party and to the authors.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX**Individual opinion by Committee members Mr. Walter Kälin and
Mr. Hipólito Solari Yrigoyen**

We agree with the Committee that the violation of the prohibition of discrimination has been redressed by the Supreme Court to the effect that the authors are no longer victims of said violation, but regret that other relevant aspects of the case were not examined. While it is true that the authors have not explicitly claimed to be victims of their rights to choose their own residence and to be protected against being subjected to arbitrary or unlawful interference with their privacy and home, the facts before us (paragraphs 2.3 - 2.5 and 2.9) as well as their claim that their homes and livelihoods were radically affected (paragraph 3.2) clearly raise issues under Articles 12, paragraph 1 and 17 of the Covenant. To be forced to leave one's own home to make place for the realization of a development project such as the expressway at issue in the present case certainly constitutes a restriction of these rights which is consistent with the Covenant only if it is provided by the law and necessary to achieve one of the legitimate aims listed in Article 12, paragraph 3 and is neither unlawful nor arbitrary in accordance with Article 17. While building an expressway may certainly be important for the development of a country and thus serve a legitimate aim, these provisions require that forced displacements or relocations must be lawful, i.e. ordered in accordance with domestic law, and necessary to achieve this aim.

We note that the REA started the construction of the expressway along the "Final Trace", without having obtained a new EIA, as required by law. The Supreme Court found a violation of the authors' right to equality on this ground. In addition, it appears that surveys were conducted in some of the authors' homes, without them having received any notice. Finally, it seems that the "Final Trace" affected more than double the number of houses that would have been affected by the "Combined Trace" in violation of the CEA's requirement that the final trajectory should minimise the relocation of individuals. All of this indicates that the ordered displacement of the authors may neither have been lawful nor necessary to the extent that a less intrusive trajectory might have been possible.

For these reasons, the Committee should have declared the communication admissible and examined these questions on the merits. The Committee could have invited the State party to submit further comments, should it have felt that the State did not have a sufficient opportunity to comment on the issues related to Articles 12 and 17 of the Covenant.

[Signed] Mr. Walter Kälin
[Signed] Mr. Hipólito Solari Yrigoyen

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
