



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2285/2013*, **, ***

<i>Submitted by:</i>	Basem Ahmed Issa Yassin et al. (represented by counsels Bret Thiele, Michael Sford and Emily Schaeffer)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Canada
<i>Date of communication:</i>	28 February 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 August 2013 (not issued in document form)
<i>Date of adoption of decision:</i>	26 July 2017
<i>Subject matter:</i>	Responsibility of the State for activities of private enterprises
<i>Procedural issues:</i>	Lack of standing; incompatibility with provisions of the Covenant; non-substantiation of claims
<i>Substantive issues:</i>	Restrictions to freedom of movement; unlawful interference with the home; deprivation of the right to enjoy one's own culture
<i>Articles of the Covenant:</i>	7, 12 (1), 17 and 27
<i>Articles of the Optional Protocol:</i>	1 and 2

1. The authors of the communication are Basem Ahmed Issa Yassin, born in 1977 in the Palestinian village of Bil'in; Maysaa Ahmed Issa Yassin, born in 1978 in Bil'in; Lamyaa Ahmed Issa Yassin, born in 1982 in Jerusalem; Nora Ahmed Issa Yassin, born in 1983 in Jerusalem; Tagreed Ahmed Issa Yassin, born in 1985 in Bil'in; Mohammed Ahmed Issa Yassin, born in 1989 in Bil'in; Abdullah Ahmed Issa Yassin, born in 1991 in Bil'in;

* Adopted by the Committee at its 120th session (3–28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais and Margo Waterval.

*** A joint opinion by Committee members Olivier de Frouville and Yadh Ben Achour (concurring) is annexed to the present decision.



Esraa Ahmed Issa Yassin, born in 1987 in Bil'in; Yosra Youcef Mohammed Yassin, born in 1957 in Bil'in; Mazen Ahmed Issa Yassin, born in 1980 in Bil'in; the estate of the late Ahmed Issa Abdallah Yassin; and Mohammed Ibrahim Ahmed Abu Rahma, Vice-Chair of the Bil'in Village Council, on behalf of the Bil'in Village Council. The authors claim to be victims of violations by Canada of their rights under articles 2, 7, 12, 17 and 27 of the Covenant. The authors are represented by counsel. The Optional Protocol entered into force for Canada on 19 August 1976.

The facts as submitted by the authors

2.1 The Palestinian village of Bil'in is located north of Jerusalem and west of Ramallah, in the West Bank, occupied Palestinian territory. Its municipal lands are adjacent to the 1967 border with Israel proper, also known as the Green Line. In 1991, land formerly considered private and/or under Bil'in municipal jurisdiction was determined by Israeli authorities to be "State land". The land thus expropriated was subsequently used to construct part of the settlement known as the Modi'in Illit settlement bloc.

2.2 Construction on parts of the expropriated land began in 2001, and construction of the settlement neighbourhood of East Mattityahu, which sits squarely on the authors' land, began around 2003. The neighbourhood constitutes approximately 25 per cent of the village's historical municipal lands (approximately 700 dunams, or 70 hectares). Green Park International, Inc. and Green Mount International, Inc., transnational corporations based in Canada, were among the main corporations involved in building the neighbourhood and marketing the purchase of condominiums among the Israeli population.

2.3 Until expropriated, these lands had been used by the authors for livelihood purposes, including for olive groves and the grazing of sheep and goats. In addition to limiting their livelihood, barring Bil'in residents from access to their land denies them the ability to enjoy it, including to experience and express their culture on their land and to engage in recreational activities on it. For instance, olive groves are a symbolic and traditional element in Palestinian culture and their harvesting is a community activity. Many of the olive trees uprooted to construct the settlement were 50 to 100 or more years old and were planted by the parents and grandparents of Bil'in residents, and thus had a familial value.

2.4 While Israel is responsible for depriving the authors of their rights over the lands in question, it was Green Park International and Green Mount International that made the construction of the settlement possible and profited from it. Accountability mechanisms in Israel have failed to provide the authors with an effective remedy. Four related petitions were submitted to the Supreme Court of Israel, sitting as the High Court of Justice, against the Government of Israel and the Israeli Defence Forces commander in the West Bank, among other respondents.

2.5 The first petition was filed on 5 September 2005 by the Chair of the Bil'in Village Council, Ahmed Issa Abdallah Yassin. Based on Israeli jurisprudence on the matter, the petition challenged the route of the separation barrier ("the wall") on Bil'in land, cutting off the village from over half of its municipal land. The decision on this petition was handed down on 4 September 2007. The Court accepted the authors' argument that the route was chosen to support the construction of the new neighbourhood rather than for security reasons, and ordered the Government and the West Bank commander to present an alternative route for the security barrier that would be less harmful to the residents of Bil'in. As a result of the decision, in July 2011 the barrier was transferred to a route closer to the Modi'in Illit settlement and about 25 per cent of Bil'in's land was returned to it. Some 25 per cent of Bil'in's land remains behind the barrier.

2.6 The second petition was filed on 4 January 2006 and challenged the legality of the building permits and construction work carried out to build the settlement. This petition was based on Jordanian planning and construction law as enshrined in Israeli military orders applied to the occupied Palestinian territories.¹ During the deliberations on this petition, an interim injunction was issued ordering all construction of the new

¹ In the first and second petitions, Green Park International and Green Mount International requested, and were approved, to be joined as respondents.

neighbourhood to be halted. The Israeli Civil Administration launched a replanning process, as a result of which new building permits were issued that were in conformity with the actual construction that had already begun. The petition was thus dismissed.

2.7 A third petition, against the new planning process, was dismissed on 5 September 2007. A fourth petition was filed in an attempt to repeal retroactively the 1991 declaration of part of Bil'in's land as "State land". The petition was dismissed on 9 November 2006. Despite the fact that during the litigation of the first petition the authors learned that the land declaration was based on false purchase claims — a fact that was concealed from them at the time of declaration — the Court held that although the authors' claims might be justified, the matter could not be adjudicated so many years after the declaration.

2.8 Following the legal actions taken in Israel, the authors sought to hold Green Park International and Green Mount International accountable for their actions on Bil'in lands and sought remedies before the Canadian judicial system. In formulating their complaints the authors relied on international law and claimed violations related to freedom of movement and denial of access to, use of and control over land that was used historically for livelihood purposes. They also claimed accountability by the two corporations for aiding and abetting in the commission of the war crime of transferring, directly or indirectly, the population of the occupying Power to the occupied territories.

2.9 Thus, in July 2008, a civil action was filed before the Superior Court of Quebec by the Bil'in Village Council and Ahmed Issa Abdallah Yassin.² On 18 September 2009, the Court dismissed the case, declining jurisdiction on account of *forum non conveniens*. In October 2009, the authors appealed to the Quebec Court of Appeal, which confirmed the Superior Court's decision on 11 August 2010. On 6 October 2010, the authors filed an application for leave to appeal to the Supreme Court of Canada, which was dismissed on 3 March 2011. The Supreme Court's dismissal was consistent with its previous decision not to review the case of *Canadian Association Against Impunity v. Anvil Mining Ltd.*, in which the Quebec Court of Appeal held that Canadian courts lacked jurisdiction over actions by Canadian corporations acting abroad. Plaintiffs in that case sought to hold Anvil Mining Ltd., a corporation incorporated in Quebec, accountable for complicity in massacres carried out in the Democratic Republic of the Congo. The Court of Appeal held that Canadian courts lacked jurisdiction when there is no link to activities that occurred within Canadian territory.

The complaint

3.1 The authors claim to be victims of violation of their rights under article 12 of the Covenant. Since 1996, military orders issued by the Israeli military commander of the occupied West Bank have prohibited entry of Palestinians into settlement areas and instituted a permit regime for Palestinians who work in settlements. In 2002, the commander issued an order prohibiting Palestinians from entering the settlement of Modi'in Illit without a permit. The movement restrictions were enforced when the two Canadian corporations began construction.

3.2 The freedom of movement of the authors has been violated because they can no longer access their lands, which they used for generations for agriculture, grazing and other livelihood purposes, because of the unlawful settlements constructed by the two corporations. Consequently, Canada violated its extraterritorial obligation to ensure respect for article 12 (1) of the Covenant by failing to provide the authors with effective remedies in holding the two corporations accountable for the violation and by failing to adequately regulate the corporations to ensure that their activities did not violate the Covenant.

3.3 The authors also claim to be victims of violations of articles 17 and 7. The settlement of Modi'in Illit resulted in their forced eviction from land which is closely tied to housing and integral to the functioning of each household, and should thus fall within the scope of the definition of "home". The authors, like Palestinian villagers generally, consider

² After Mr. Yassin's death in 2009, his heirs continued the suit on his behalf and were added to the action as "plaintiffs in continuance of suit". Most of those heirs are authors in the present communication.

agricultural lands near their houses to be part of their home. The agricultural land used by the authors as the primary means of livelihood or occupation falls under the scope of article 17. Furthermore, the authors were subjected to unlawful interference with their rights under article 17. The building, marketing and selling of housing units to Israeli settlers by the two corporations are activities prohibited by international law, including the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and therefore are unlawful within the meaning of article 17. Furthermore, the Committee has held that the protections under this article apply to “interferences and attacks whether they emanate from State authorities or from natural or legal persons”,³ and that States parties are under a duty themselves not to engage in interferences inconsistent with article 17 and to provide the legislative framework prohibiting such acts by natural or legal persons.⁴

3.4 The two corporations engaged in activities that have resulted in violations of articles 17 and 7 of the Covenant by means of unlawful and arbitrary interference with the authors’ homes. Therefore, Canada violated its extraterritorial obligation to guarantee these provisions by not providing effective remedies for the authors to hold the two corporations accountable for the violations and by not adequately regulating the corporations to ensure that their activities did not violate these provisions.

3.5 The authors further claim to be victims of violations of article 27. While they are not members of an ethnic minority per se, they are members of the indigenous Palestinian population and their culture, including agricultural production and related close connection with the land, is being destroyed in order to construct the illegal settlements, to which they have no access. Because the two corporations are complicit in the violation of article 27 by Israel, Canada violated its extraterritorial obligation to guarantee article 27 by not providing to the authors effective remedies to hold the two corporations accountable for these violations and by not regulating the corporations adequately to ensure that their activities did not violate article 27.

3.6 The authors cite international norms and pronouncements which, in their view, make clear that Canada has extraterritorial obligations under the Covenant, including the obligation to protect or to ensure Covenant rights by regulating the activities of Canadian corporations for activities undertaken abroad, and to investigate and appropriately sanction any activities that violate human rights and ensure that remedies are available to victims of those violations. Thus, under article 16 of the draft articles on responsibility of States for internationally wrongful acts, responsibility may be shared between two States for an internationally wrongful act. Furthermore, the Committee has implied that even where a person is located outside a State’s territory, jurisdiction or effective control, States retain their obligation to respect and ensure the rights in the Covenant. The authors cite the Committee’s concluding observations on the sixth periodic report of Germany, wherein the Committee stated:

While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (art. 2, para. 2). The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.⁵

3.7 The authors also quote the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, adopted in 2011 by leading international human rights experts. While the Principles focus on economic, social and cultural rights, the principle of indivisibility and interrelatedness of rights means that they

³ See general comment No. 16 (1988) on the right to privacy, para. 1.

⁴ *Ibid.*, para. 9.

⁵ See CCPR/C/DEU/CO/6, para. 16.

are relevant to the International Covenant on Civil and Political Rights as well. Principle 3 states: “All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially”. The Principles include the obligation to ensure protection of human rights from violation by non-State actors, including corporations. Thus, according to principle 24: “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures. All other States have a duty to refrain from nullifying or impairing the discharge of this obligation to protect”. Principle 25 states: “States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: ... (b) where the non-State actor has the nationality of the State concerned; (c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned”. Principle 27, inter alia, elaborates on the general obligation to provide an effective remedy: “All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected”.

3.8 Principle 26 of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedies”. Such legal barriers can include “where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim”.⁶

3.9 Given the dismissal of their claims in Canada on the ground of *forum non conveniens*, the authors never had the opportunity to be fully heard and have their case decided on the merits. Consequently, they were denied access to any effective remedy.

3.10 The extraterritorial obligation to protect or ensure human rights also entails regulating corporations incorporated under a State’s jurisdiction. Since the two corporations are incorporated in Canada, the State party has an obligation to ensure that they do not violate human rights at home or abroad, including human rights protected by the Covenant.

3.11 Absent exceptional circumstances, only the conduct of the organs of the State may be attributable to the State and thus engage its responsibility. However, such conduct includes the failure of the State to adopt regulations, or to implement them effectively, where such a failure is in violation of the human rights undertakings of the State. This principle has been affirmed by human rights bodies, including the Committee.⁷ The authors

⁶ See A/HRC/17/31, commentary to principle 26.

⁷ The authors cite paragraph 8 of general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which “the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities”. The authors also cite the concluding observations on Canada of the Committee on the Elimination of Racial Discrimination in 2007, in which the Committee called upon Canada to “take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada”, recommending in particular that the State party “explore ways to hold transnational corporations registered in Canada accountable” (see CERD/C/CAN/CO/18, para. 17). In its concluding observations on the United States of America in 2008, the same Committee encouraged the State party “to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the

also refer to the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, submitted to the Human Rights Council in 2013, in which the mission recommended that “private companies must assess the human rights impact of their activities and take all necessary steps — including by terminating their business interests in the settlements — to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law as well as the Guiding Principles on Business and Human Rights”. The mission called upon Member States “to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations”.⁸

3.12 Consequently, the Committee should find that the State party has violated its extraterritorial obligation to ensure the authors’ rights under the Covenant by failing to regulate and hold Green Park International and Green Mount International accountable for their activities in the occupied Palestinian territory which violate the Covenant.

3.13 Based on the foregoing, the State party has violated its extraterritorial obligation to ensure articles 2, 7, 12, 17 and 27 of the Covenant by failing to regulate the activities of the two corporations so as to prevent human rights violations in the occupied Palestinian territory.

3.14 With respect to remedies, the authors request that the State party ensure, in law and in practice, that victims of violations of the extraterritorial obligation to ensure respect for Covenant rights have effective judicial remedies available within the Canadian legal system. Furthermore, the State party should set out clearly its expectation that all business enterprises domiciled in its territory and/or in its jurisdiction will respect human rights standards in accordance with the Covenant throughout their operations, including by taking appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact the enjoyment of Covenant rights in territories outside Canada. The Committee should call upon Canada to take measures to stop Green Park International and Green Mount International from undertaking activities or being complicit in activities that violate the Covenant, and levy sanctions on them in the event of failure to end such activities. The Committee should call upon the State party to ensure that effective remedies are available to the authors, including an appeal before the Supreme Court of Canada.

State party’s observations on admissibility and the merits

4.1 The State party provided observations on admissibility and the merits on 17 June 2014. The State party argues that the communication is inadmissible on three grounds. First, the authors do not have standing to bring the communication before the Committee. Second, the articles of the Covenant invoked by the authors do not have extraterritorial effect. Third, the communication contains no objective evidence and is therefore manifestly unfounded. Should the Committee consider it admissible, the State party requests, on the basis of its submission, that the communication be found without merit.

4.2 On the facts, the State party indicates that Green Park International and Green Mount International are legally incorporated and domiciled in the jurisdiction of the Province of Quebec. Both corporations were registered on 6 July 2004. The registry information, publicly available, provides the name of the person who is both president and secretary for both corporations. His address is in the city of Herzliya, Israel. Regarding judicial proceedings in Israel, the State party indicates that the four petitions were made on behalf of Ahmed Issa Abdallah Yassin, then Chair of the Bil’in Village Council. It is unclear to what extent the individual authors of the communication were directly involved

State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee [recommended] that the State party explore ways to hold transnational corporations registered in the United States accountable” (see CERD/C/USA/CO/6, para. 30).

⁸ See A/HRC/22/63, para. 117.

in the petitions. The respondents included the Government of Israel, various high-level public officials in that Government and various corporate entities, including Green Park International and Green Mount International.

4.3 Regarding proceedings in Canada, the State party explains that the basis of the civil action was the plaintiffs' allegation that by constructing and selling condominium residences in the Modi'in Illit settlement, the two corporations were assisting Israel in transferring part of its civilian population to territory in the West Bank. The corporations had therefore assisted in the perpetration of war crimes contrary to various international and domestic legal instruments, making them civilly liable to the plaintiffs under the Civil Code of Quebec. The remedies sought by the plaintiffs included declarations as to the illegality of the defendants' conduct and punitive damages.

4.4 Green Park International and Green Mount International filed motions arguing, *inter alia*, that the issues raised by the plaintiffs had already been decided by the Israeli Supreme Court and that recognizing the latter's decisions should lead to dismissal of the action. The Superior Court chose to recognize three of the decisions of the Supreme Court; however, it concluded that such recognition did not settle all the issues raised in the Canadian court and, consequently, there was no *res judicata*.

4.5 Green Park International and Green Mount International also argued that the Superior Court should decline to exercise jurisdiction on the basis of *forum non conveniens*. The Court accepted this argument and decided that the courts of Israel were in a better position to adjudicate on the claims contained in the action, such that the Superior Court should exercise its exceptional power to decline jurisdiction. This decision was taken pursuant to article 3135 of the Civil Code of Quebec, according to which: "Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide". The decision to decline jurisdiction was based on the following considerations.

4.6 First, there appeared to be little connection between Quebec and the persons involved. All the plaintiffs and witnesses resided in Israel or the West Bank. Furthermore, although Green Park International and Green Mount International were legally incorporated in Quebec, this was essentially their only link to Canada. According to an affidavit filed by their president, the corporations had been incorporated in Canada for domestic Israeli tax reasons only; they acted as alter egos for and on behalf of a corporation which was not a resident of Canada and did not have any assets in Canada, and they themselves had no assets whatsoever in Canada.

4.7 Second, there appeared to be little, if any, connection between Quebec and the facts at issue. All injurious acts allegedly occurred in the West Bank; any relevant contracts would have been entered into in the West Bank or Israel, and were likely to be written in Hebrew or Arabic; any material evidence was likely to be situated in Israel or the West Bank; and the action could be expected to involve little to no evidence of events in Quebec.

4.8 Third, the orders requested by the plaintiffs would require enforcement by the courts of Israel, rather than those of Quebec. Even if the defendants were being sued for punitive damages, the corporations have no assets in Quebec. Their assets, if any, would appear to be located in the West Bank, where the buildings in dispute are situated. Furthermore, the plaintiffs were seeking injunctive relief from Quebec courts with respect to the corporations' activities in the West Bank, and the enforcement of any such orders would therefore require a further application by the plaintiffs in the appropriate courts in Israel. This additional procedure would be unnecessary if the action were brought before the Israeli High Court of Justice.

4.9 Fourth, the applicable law in determining the plaintiff's action would be the law applicable in the West Bank. Expertise in such law would be possessed by judicial authorities in Israel rather than Quebec.

4.10 Fifth, although the plaintiffs' choice of a Quebec forum for their action might have some significant advantages for them, this factor had little weight because the plaintiffs

engaged in “forum shopping”, selecting a forum simply to gain a juridical advantage rather than by reason of a real and substantial connection to that forum.

4.11 Sixth, it would be in the interest of parties and in the broader interest of justice for the action to be tried in Israel. For the parties, adjudicating the action in Quebec would be impractical and would impede the impartial, prompt and efficient adjudication of the action on the basis of the best evidence available. With respect to the broader interests of justice, the action, as framed, could hardly lead to a just result. The plaintiffs had only turned to Canadian courts after some of their claims had been considered and rejected by judicial authorities in Israel.

4.12 Accordingly, the action was dismissed by the Superior Court after it exercised its exceptional discretionary power to decline to exercise adjudicative jurisdiction on the basis of *forum non conveniens*. Subsequently, the Court of Appeal of Quebec dismissed the plaintiffs’ appeal and upheld the Superior Court’s decision. The leave application to the Supreme Court was also dismissed and communicated to the plaintiffs through an order without reasons.

Lack of standing

4.13 The State party argues that the communication is inconsistent in terms of how the authors are identified. At times, it appears that two legal entities (the estate of the late Ahmed Issa Abdallah Yassin and the Bil’in Village Council) are identified, and one of the individual authors, Mohamed Ibrahim Ahmed Abu Rahma, seems to be acting on behalf of the Bil’in Village Council. In circumstances where an individual is deceased, it is possible for that individual’s heirs to submit a communication directly on his or her behalf, but that individual’s estate cannot, in and of itself, be the author of a communication. Furthermore, the Committee has indicated that an individual who is the leader of an organization or other legal entity cannot act on that entity’s behalf in submitting a communication.⁹ Accordingly, the State party argues that the communication is inadmissible on the grounds of incompatibility with the Optional Protocol, to the extent that it is being made on behalf of the above-mentioned legal entities.

4.14 The communication is also inadmissible to the extent it is being made on behalf of Mohamed Ibrahim Ahmed Abu Rahma because his power of attorney document states that he is acting on behalf of the Council and not in his own personal capacity.

4.15 The State party argues that none of the authors has standing to bring this communication because they were not subject to Canada’s jurisdiction at the time of the alleged violations of the Covenant. The communication is therefore incompatible with the communications procedure established by article 1 of the Optional Protocol and inadmissible. Canada does not exercise jurisdiction of any kind over individuals living in the village of Bil’in or elsewhere in the West Bank. The facts alleged by the authors do not involve, in any way, the extraterritorial conduct of any Canadian State actors. The only connection between Canada and the facts alleged is a tenuous and indirect one: the alleged involvement of two legal entities that are incorporated in Quebec but, in fact, have no other meaningful connection to that province. Furthermore, the alleged activities of Green Park International and Green Mount International that are the focus of the present communication (expropriation of land and building of housing) were not governed by Canadian laws. Furthermore, since Canadian courts declined to exercise adjudicative jurisdiction over the civil action, none of the authors was actually subject to Canada’s adjudicative jurisdiction for the underlying facts that were alleged in the civil action and which are the focus of the present communication.

Incompatibility with the provisions of the Covenant

4.16 The State party argues that the authors’ allegations of violations of articles 7, 12, 17 and 27, in conjunction with the obligations under article 2 (1) to ensure the Covenant’s rights and under article 2 (3) to provide an effective remedy, fall outside the scope of the

⁹ The State party cites in this respect communication No. 40/1978, *Hartikainen v. Finland*, Views adopted on 9 April 1981.

State party's obligations under the Covenant and are therefore incompatible with its provisions. The State party argues that Canada had no article 2 (1) obligation in relation to the authors to ensure their Covenant rights for the following reasons. The authors have not alleged that Canadian State actors, whether inside or outside Canada, committed violations of the State party's obligations to respect the rights set out in the Covenant. The only connection between Canada and the extraterritorial events alleged by the authors is the fact that Green Park International and Green Mount International were incorporated in a Canadian jurisdiction. Aside from this, the authors have not alleged that either of these two non-State actors has any connection to any level of government in Canada. The link of the two corporations with Canada did not create a situation in which the authors were subject to Canada's jurisdiction at the relevant time.

4.17 At the time of the events in question, the authors were neither within Canada's territory nor subject to its jurisdiction, and therefore Canada could not have had obligations to ensure their Covenant rights. Furthermore, the authors have been explicit that these events, and thus the affected authors themselves, were extraterritorial to Canada at the time of the alleged violations. Canada's obligation to ensure the Covenant rights cannot apply to individuals outside of Canadian territory because of the mere fact that two legal entities technically incorporated in Canada were allegedly involved in activities that affected those individuals. Such an interpretative approach would be outside the scope of the Covenant. The Guiding Principles on Business and Human Rights recall in this respect that "at present, States are not generally required under international human rights law to regulate the extraterritorial activities of business domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis".¹⁰ The authors' reliance on concluding observations on States parties' reports by the Committee and other treaty bodies to establish novel extraterritorial obligations is mistaken. The State party understands that in making such comments the Committee and other treaty bodies have been encouraging certain States parties to choose to exercise their permissive prescriptive jurisdiction and regulate certain extraterritorial activities of corporations domiciled in their territory or jurisdiction. The comments by treaty bodies are carefully qualified to recognize that the scope of any existing extraterritorial prescriptive jurisdiction is significantly constrained by general principles of public international law. The comments do not appear to be making the assertion that States parties to the Covenant or other international human rights instruments are actually obligated to exercise that prescriptive jurisdiction.

4.18 As to other materials cited by the authors, the State party contends that the reference to the draft articles on State responsibility of the International Law Commission is irrelevant, as the authors do not allege that certain actions of another State should be attributed to Canada for the purpose of the obligation to respect under article 2 (1) of the Covenant. As to the Maastricht Principles, they are a statement by prominent scholars conveying their view of how extraterritorial obligations should be interpreted in relation to economic, social and cultural rights, and they are highly limited in their persuasive value for the interpretation of the Covenant.

4.19 As to the authors' claims that Canada failed to provide them with an effective remedy, the State party argues that in the absence of any arguable violations by Canada of substantive Covenant rights, Canada cannot have an obligation under article 2 (3) to provide an effective remedy. Even if the authors had substantiated that they are victims of violations of their substantive rights, those violations would not engage Canada's responsibility under article 2 (1), as explained above, and therefore any obligation under article 2 (3) to provide an effective remedy would not apply to Canada.

4.20 That said, the State party understands the human rights and other concerns that can be raised by the transnational activities of business enterprises; recognizes that action is required and works with a range of interlocutors to promote corporate social responsibility; and promotes international standards on business and human rights in a number of multilateral forums.

¹⁰ See A/HRC/17/31, commentary to principle 2.

Allegations manifestly unfounded

4.21 The State party argues that the communication is manifestly unfounded. The authors' submissions consist almost entirely of legal pleadings on the interpretation of the Covenant, mainly on article 2, with some very general factual assertions. They do not include any specific information, let alone objective corroborating evidence, about the personal experiences of the individual authors. There is no specific substantiation to establish the effect on the individual authors of the alleged activities on the lands surrounding the village.

4.22 No evidence is provided that the individual authors actually experienced a restriction on their right to liberty of movement and freedom to choose residence under article 12 (1), and no evidence that such a restriction failed to meet the requirements of legality, necessity and proportionality under article 12 (3).

4.23 Regarding their claims under articles 7 and 17, the authors have provided no evidence to establish that they actually experienced, as they claim, forced eviction from land that is closely tied to housing and integral to the functioning of each household. For example, the authors provided no evidence to substantiate that the alleged evictions from agricultural land actually occurred, or that the individual authors were affected by such evictions. Such evidence would be crucial to substantiate the cultural significance they attach to the alleged evictions and to substantiate the existence of an article 7 violation.

4.24 As to the allegations under article 27, the rights under this provision turn on highly personal facts about the cultural and community experiences of individuals. Allegations without any personal substantiation are thus clearly manifestly unfounded.

4.25 The authors have failed to provide sufficient substantiation in factual support of their pleadings regarding article 2 of the Covenant. They have provided no evidence to substantiate the involvement of Green Park International and Green Mount International in any of the activities at issue and to establish any meaningful connection between Canada and the activities of the two corporations. Furthermore, their claim under article 2 (3) is not based on any particular procedural unfairness; they are simply dissatisfied with the outcome of their proceedings. It is essential that the right to an effective remedy be interpreted in a way that recognizes the continued relevance of the private international law principles governing the jurisdiction of domestic courts in a transnational context.

Authors' comments on the State party's observations

5.1 The authors provided comments on the State party's observations on 30 September 2014. They argue that the case should be declared admissible and examined on the merits.

5.2 On the issue of standing before the Committee, the authors argue that the communication is brought by the individual authors but also by the Bil'in Village Council, which is the body representing the individuals residing in Bil'in who were affected by the violations of the Covenant. The village itself suffered damages as a result of the construction of the settlement. Mohamed Ibrahim Ahmed Abu Rahme was the duly elected representative of the Council, and is included as author because of his capacity to represent the interests of the village. As to the estate of the late Ahmed Issa Abdallah Yassin, it is not included in the communication as a legal entity per se, but rather as a means of representing an individual who is now deceased. The losses he suffered as a result of violations of the Covenant are now acknowledged by his estate.

5.3 The reason the Bil'in Village Council is named as one of the authors is due in part to the collective nature of the relationship between Bil'in village and its land, and thus to ensure that remedies provided through the present communication will include all those individuals suffering a detrimental impact as a result of the violations caused by the two corporations. A majority of the village suffered both economic and cultural damage. The former was caused by the reduced agricultural yield, particularly of olives and olive oil, and the latter by the inability to use the land as a place of community gathering. Furthermore, although the construction began only in February 2005, the Bil'in residents were barred from accessing the land in question beginning 1997, when it was declared "State land" and the authors were evicted from it.

5.4 On the issue of jurisdiction, the authors reiterate that the State party had effective control of the two corporate entities, and therefore they fell within the jurisdiction of the State party for the purpose of the Optional Protocol and the Covenant. Furthermore, the question of jurisdiction is related to the concept of responsibility. Given the universal nature of human rights, if a State party can prevent or remedy a human rights violation, it has the responsibility to do so. In its statement on the implication of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the occupied Palestinian territory, the Working Group on the issue of human rights and transnational corporations and other business enterprises has indicated that where transnational corporations are involved in conflict-affected areas, their home States have crucial roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, and that home States as well as host States should review their policies, legislation, regulations and enforcement measures to ensure that they effectively serve to prevent and address the heightened risk of business involvement in abuses in conflict situations.¹¹ The Working Group also held that while according to guiding principle 2 there is no general obligation to regulate the extraterritorial activities of a State's natural or legal persons, specific obligations exist in relation to particular issues.¹² As for the Maastricht Principles, their adoption was not intended to be a new source of law but rather a restatement of the current state of international law regarding extraterritorial obligations. The commentary to the Principles points out that principle 25 (c) makes it clear that, based on the active personality principle, a State may regulate an enterprise which is registered or domiciled on the territory. Finally, the authors argue that the issue under the draft articles on responsibility of States is whether the violation can be attributed to a State party, not whether a State's actions are attributable to another State.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The authors claim to be victims of violations of their rights under articles 2, 7, 12, 17 and 27 as a result of the eviction from their land and the construction on it of an Israeli settlement. They claim that the State party is responsible for those violations to the extent that it violated its extraterritorial obligation to guarantee the authors' rights under the foregoing provisions by: (a) not providing them with effective remedies by failing to hold the two building corporations accountable for the violations; and (b) not adequately regulating the two corporations to ensure that their activities do not violate the provisions. The State party has challenged the admissibility of the authors' claims on the grounds that the authors do not have standing before the Committee, that the articles invoked do not have extraterritorial effect and that the allegations are manifestly unfounded.

6.3 The State party argues that two of the authors (the estate of the late Ahmed Issa Abdallah Yassin and the Bil'in Village Council, represented by its Vice-Chair) are legal entities and, therefore, cannot be considered as victims under the Covenant and the Optional Protocol. The Committee recalls its jurisprudence according to which, under article 1 of the Optional Protocol, only individuals have the right to submit a communication. As the estate and the Village Council are not individuals, the Committee considers that they do not meet the criterion of *ratione personae* enabling them to submit the communication. Accordingly, the communication is declared inadmissible with respect to them, under article 1 of the Optional Protocol, because of lack of personal standing.¹³

6.4 The Committee further notes the State party's argument that the communication is incompatible with the communications procedure as the authors do not fall under the State party's jurisdiction. The Committee recalls that under article 1 of the Optional Protocol, it is allowed to receive and consider communications from individuals subject to the

¹¹ See www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf.

¹² *Ibid.*, footnote 26.

¹³ See communications No. 163/1984, *C et al. v. Italy*, decision adopted on 10 April 1984, para. 5; and No. 104/1981, *J.R.T. and the W.G. Party v. Canada*, decision adopted on 6 April 1983, para. 8.

jurisdiction of States parties. It also recalls that in paragraph 10 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, it stated that

States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in general comment 15 [on the position of aliens under the Covenant] adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

6.5 In the present case the Committee notes that since 2004, Green Park International and Green Mount International have been registered and domiciled in Canada, where they pay taxes. The companies themselves accordingly are within the State party's territory and jurisdiction. While the human rights obligations of a State on its own territory cannot be equated in all respects with its obligations outside its territory, the Committee considers that there are situations where a State party has an obligation to ensure that rights under the Covenant are not impaired by extraterritorial activities conducted by enterprises under its jurisdiction.¹⁴ That is particularly the case where violations of human rights that are as serious in nature as the ones raised in this communication are at stake.

6.6 The Committee notes the State party's submission that the address of the president and secretary of both corporations is in the city of Herzliya, Israel, and that the only connection between Canada and the facts alleged is the alleged involvement of two legal entities that are incorporated in Quebec but have no other meaningful connection to that province or to the State party. The Committee also notes that the Superior Court of Quebec declined jurisdiction on the discretionary grounds of *forum non conveniens*, as indicated in paragraphs 4.6–4.11, because, inter alia: (a) there appeared to be little connection between Quebec and the persons involved in the claim before the Court, as all the plaintiffs and witnesses resided in Israel or the West Bank; (b) the corporations had been incorporated in Canada for domestic Israeli tax reasons only and acted as alter egos for and on behalf of a corporation which was not a resident of Canada and did not have any assets in Canada; (c) Green Park International and Green Mount International themselves had no assets in Canada. Their assets, if any, would appear to be located in the West Bank, where the buildings in dispute were situated; and (d) the plaintiffs had only turned to Canadian courts after some of their claims had been considered and rejected by judicial authorities in Israel.

6.7 Taking into consideration the elements of connection with the State party set out in paragraphs 6.5 and 6.6 above, the Committee also considers that, in the present case, the authors have not provided the Committee with sufficient information about the extent to which Canada could be considered responsible as a result of a failure to exercise reasonable due diligence over the relevant extraterritorial activities of the two corporations. This includes, for example, a lack of information regarding the existing regulations in place in the State party governing the corporations' activities and the State party's capacity to effectively regulate the activities at issue; the specific nature of the corporations' role in the construction of the settlement and the impact of their actions on the rights of the authors; and the information reasonably available to the State party regarding these activities, including the foreseeability of their consequences. On the basis of the information provided

¹⁴ See communications No. 1539/2006, *Munaf v. Romania*, Views adopted on 30 July 2009, para. 14.2; and No. 2005/2010, *Hicks v. Australia*, Views adopted on 5 November 2015, paras. 4.4–4.6. See also CCPR/C/CAN/CO/6, para. 6; CCPR/C/DEU/CO/6, para. 6; and general comment No. 31, para. 8.

by the parties, the Committee considers that the nexus between the State party's obligations under the Covenant, the actions of Green Park International and Green Mount International and the alleged violation of the authors' rights is not sufficiently substantiated to render the case admissible.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the authors and the State party.

Annex

[Original: French/English]

Concurring opinion of Committee members Olivier de Frouville and Yadh Ben Achour

1. We agree with the Committee in respect of the inadmissibility of the communication on the grounds that the authors have not sufficiently substantiated their claims. That conclusion implies that, in the future, if a communication were sufficiently substantiated, the Committee could consider it admissible. However, we consider that the Committee perhaps did not make sufficiently clear the criteria on the basis of which it would assert jurisdiction.
2. This is the first time that the Committee has been seized, in the context of its functions under the Optional Protocol, of the issue of the responsibility of a State party in connection with acts committed by commercial corporations that fall under its jurisdiction in the territory of another State.
3. The Committee has, however, already addressed this issue in the context of its review of States parties' periodic reports.¹ In particular, with regard to Canada, and in respect of article 2 of the Covenant, the Committee expressed concern that the victims of such violations did not have access to remedies and that no "legal framework that would facilitate such complaints" had been established. In so doing, the Committee seems to have implicitly recognized that victims of such acts could fall under the "jurisdiction" of the State party, in the sense of article 2 (1) of the Covenant and article 1 of the Optional Protocol, but does not explain why. The present communication could offer the Committee an opportunity to clarify its jurisprudence.
4. In paragraph 6.4 of the present decision, the Committee recalls the text of article 1 of the Optional Protocol, as well as its jurisprudence on the concept of "jurisdiction", including as summarized in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. In that document, the Committee established the general principle that a State party has an obligation to respect and ensure the rights laid down in the Covenant to anyone *within its power or effective control*, even if not situated within the territory of the State party. It could therefore have been expected that, in paragraph 6.5 of the present decision, the Committee would explain its interpretation of the terms "power or effective control" in the specific factual context of the communication. Unfortunately, paragraph 6.5 sheds no light in this respect.
5. The Committee has developed "an obligation to ensure that rights under the Covenant are not impaired by extraterritorial activities conducted by enterprises under its jurisdiction" and "particularly [...] where violations of human rights that are as serious in nature as the ones raised in this communication are at stake" (para. 6.5). However, even if such an obligation exists under the Covenant, it does not imply that persons who are affected by activities of Canadian corporations operating abroad fall under the jurisdiction of the State party. The statements made in paragraph 6.7 might be more helpful: the Committee reproaches the authors for not having provided sufficient information to substantiate the "nexus between the State party's obligations under the Covenant, the actions [of the corporations concerned] and the alleged violation of the authors' rights". While the wording is far from clear, it has the merit of attempting to address the State party's objections that it had no "jurisdiction of any kind over individuals living in the village of Bil'in" (para. 4.15) and, in support of this claim, states that, firstly, there is no connection between the alleged violations and the extraterritorial activities of any Canadian State actors and, secondly, that the "only connection between Canada and the facts alleged

¹ See the Committee's concluding observations on: the sixth periodic report of Germany (CCPR/C/DEU/CO/6), para. 16; the sixth periodic report of Canada (CCPR/C/CAN/CO/6), para. 6; and the fourth periodic report of the Republic of Korea (CCPR/C/KOR/CO/4), paras. 10 and 11.

is a tenuous and indirect one: the alleged involvement of two legal entities that are incorporated in Quebec but, in fact, have no other meaningful connection to that province” (para. 4.15).

6. As the State party suggests, the fundamental criterion for jurisdiction is the existence of a sufficient “connection”² or “nexus” between the acts or omissions of the State party and the alleged violations. In other words, an author falls under the power or effective control of a State party, and therefore under its jurisdiction, when it is possible to establish factually a sufficient connection between acts or omissions attributable to the State party and allegations of violations of Covenant rights that the author claims to have suffered. The connection is generally considered to be “sufficient” when the person concerned is under the physical control of an official body of the State party.³ This is the most common hypothesis for a direct connection in which the State, through its bodies, exercises power or effective physical control.

7. However, the Committee was also able to recognize that there was an indirect connection, based on the sufficient influence exercised by one State party over another State or other entity exercising its power or effective control over a person.⁴ In the case of *Munaf v. Romania*, while the context was certainly somewhat different, the Committee laid down a principle that could, it would seem, be drawn on in the context of the present communication: “a State party may be responsible for extraterritorial violations of the Covenant if it is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extraterritorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time”.⁵

8. The present decision clearly follows on from that jurisprudence, since it recognizes that, if it can be determined that the State has sufficient influence over a corporation, then the State exercises, even indirectly, power and effective control over persons who are affected by the activities of the corporation in another country.

9. There is in this case a clear development compared to previous jurisprudence, in that the third party directly responsible for the violation is not a State but a private actor. But, in fact, this development is also in line with the Committee’s jurisprudence, which has long recognized that States parties can only meet their positive obligations under the Covenant “if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities.”⁶ Furthermore, in its consideration of reports, the Committee has previously recognized that a State can establish jurisdiction and incur responsibility in connection with acts performed by armed groups or self-proclaimed entities on the territory of another State.⁷

10. The Committee’s decision in the present case is in line with the way that general international law on the matter is developing. It is true that, as the State party notes, the

² See paragraph 10.2 of communication No. 56/1979, *Celiberti de Casariego v. Uruguay*, Views adopted on 29 July 1981, in which the Committee explains that the idea of “jurisdiction” in article 1 of the Optional Protocol refers “not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred”. See also paragraph 12.2 of communication No. 52/1979, *Lopez Burgos v. Uruguay*, Views adopted on 29 July 1981.

³ In the words of paragraph 10 of the Committee’s general comment No. 31, “This principle [...] applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.”

⁴ See, specifically, communication No. 2005/2010, *Hicks v. Australia*, Views adopted on 5 November 2015, paras. 4.4 and 4.5.

⁵ Communication No. 1539/2006, *Munaf v. Romania*, Views adopted on 30 July 2009, para. 14.2.

⁶ General comment No. 31, para. 8.

⁷ In the Committee’s concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7), see paragraph 6 in respect of the Donbas region (Ukraine) and the South Ossetia region (Georgia): “to the extent that it already exercises influence over these groups and authorities which amounts to effective control over their activities”.

Guiding Principles on Business and Human Rights state that “States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction”.⁸ However, this does not mean that States do not have *any obligations* under the human rights treaties in connection with the activities of businesses operating abroad or that their responsibility in that respect can never be incurred.⁹ With regard to the Covenant, such obligations may exist where a jurisdictional link is established with persons affected by such activities. Such a link of jurisdiction may be established, as the Committee suggests in this case, on the basis of: (a) the effective capacity of the State to regulate the activities of the businesses concerned and (b) the actual knowledge that the State had of those activities and their necessary and foreseeable consequences in terms of violations of human rights recognized in the Covenant.

11. Once the issue of “jurisdiction” is resolved, other issues are raised. It must be determined, in particular, whether the authors are “victims” within the meaning of article 1 of the Optional Protocol.¹⁰ It must then be determined on the merits whether, in the present case, the State party has respected its obligations under the Covenant towards persons affected by extraterritorial activities of corporations and, specifically, whether it has taken the necessary positive measures, in terms of either legislative framework or remedies, to ensure rights. This question raises another set of issues, which, following on from its jurisprudence on the responsibility of States in connection with acts committed by private persons,¹¹ the Committee seems to wish to resolve by referring to the standard of “due diligence”. We cannot, within the necessarily limited framework of this opinion, address these issues which, in our view, are distinct from that of competence/jurisdiction. It is undoubtedly a shortcoming of the decision that the Committee that could not or did not wish to make those distinctions clearer.

⁸ See the commentary to principle 2, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

⁹ See, for example, in the framework of the International Covenant on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 25 ff., adopted shortly before the Human Rights Committee considered the present communication. Other committees tend towards similar conclusions, although we cannot cite all the references because of the word limit imposed by the United Nations for the total length of decisions.

¹⁰ See, finally, communication No. 2124/2011, *Rabbae, A.B.S. and N.A. v. the Netherlands*, Views adopted on 14 July 2016, para. 9.6.

¹¹ See in particular general comment No. 31, para. 8, as above.