CANADA

Follow-up
a) Jurisprudence - Action by Treaty Bodies

CCPR A/51/40, vol. I (1996)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

...

429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

...

Canada: Six views finding violations; four satisfactory follow-up replies and two incomplete follow-up replies received from the State Party

CCPR A/52/40, vol. I (1997)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

...

Canada: Six Views finding violations: 24/1978 - Lovelace (Selected decisions, vol. 1);12/ for State party follow-up reply, see Selected decisions, vol. 2, annex I);13/ 27/1978 - Pinkney (Selected decisions, vol. 1); no State party follow-up reply received; 167/1984 - Ominayak (1990 Report);14/ State party follow-up reply, dated 25 November 1991, unpublished; 359/1989 and 385/1989 - Davidson and McIntyre (1993 Report);15/ State party follow-up reply, dated 2 December 1993, unpublished; 469/1991 - Ng (1994 Report);9/ State party follow-up reply, dated 3 October 1994, unpublished.

12/ International Covenant on Civil and Political Rights. Human Rights Committee. Selected decisions under the Optional Protocol (CCPR/C/OP/1) (United Nations publication, Sales No. 84.XIV.2), vol. 1.

13/ Ibid. (CCPR/C/OP/2) (United Nations publication, Sales No. 89.XIV.1), vol. 2.

14/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40).

15/ Ibid., Forty-eighth Session, Supplement No. 40 (A/48/40).

9/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40).

CCPR A/53/40, vol. I (1998)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

...

Canada: Six Views finding violations: 24/1978 - Lovelace (Selected decisions, vol. 1);2/ for State party follow-up reply, see Selected decisions, vol. 2, annex I);3/ 27/1978 - Pinkney (Selected decisions, vol. 1); no State party follow-up reply received; 167/1984 -Ominayak (1990 Report (A/45/40)); State party follow-up reply, dated 25 November 1991, unpublished; 359/1989 and 385/1989 - Davidson and McIntyre (1993 Report (A/48/40)); State party follow-up reply, dated 2 December 1993, unpublished; 469/1991 - Ng (1994 Report (A/49/40)); State party follow-up reply, dated 3 October 1994, unpublished.

2/ International Covenant on Civil and Political Rights. Human Rights Committee. Selected decisions under the Optional Protocol (CCPR/C/OP/1) (United Nations publication, Sales No. 84.XIV.2), vol. 1.

3/ Ibid. (CCPR/C/OP/2) (United Nations publication, Sales No. 89.XIV.1), vol. 2.

CCPR A/54/40, vol. I (1999)

VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

...

Canada: Six Views finding violations: 24/1977 - Lovelace (Selected Decisions, vol. 1);17/ for State party's follow-up reply, see Selected Decisions, vol. 2, 18/ annex I; 27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received; 167/1984 -Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished; 359/1989 and 385/1989 - Ballantyne and Davidson, and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished; 469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished.

17/ International Covenant on Civil and Political Rights. Human Rights Committee. Selected Decisions under the Optional Protocol (United Nations publication, Sales No. 84.XIV.2), vol. 1, hereafter "Selected Decisions, vol. 1".

18/ Ibid., vol. 2 (United Nations publication, Sales No. 89.XIV.1), hereafter "Selected Decisions, vol. 2".

CCPR A/55/40, vol. I (2000)

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

...

Canada: Nine Views finding violations: 24/1977 - Lovelace (in Selected Decisions, vol. 1); for State party's follow-up reply, see Selected Decisions, vol. 2, annex I; 27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received; 167/1984 - Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished; 359/1989 and 385/1989 - Ballantyne and Davidson and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished; 455/1991 - Singer (A/49/40); no follow-up reply required; 469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished; 633/1995 - Gauthier (A/54/40); for follow-up reply see below; 694/1996 - Waldman (annex IX, sect. H.); for follow-up reply see below.

...

Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

...

Canada. In response to the Committee's Views in case No. 633/1995 - Gauthier, the Government of Canada informed the Committee on 20 October 1999 that it had appointed an independent expert to review the Press Gallery's criteria for accreditation, as well as the author's application for accreditation. The Government has also taken measures to allow visitors to Parliament to take notes. In order to address the Committee's concern that there should be a possibility of recourse for individuals who are denied membership of the Press Gallery, in the future the Speaker of the House will be competent to receive complaints and appoint an independent expert to report to him about the validity of the complaints. By a later submission, dated March 2000, the Government provided the Committee with a copy of the expert report on the Press Gallery's criteria for accreditation and their application in the author's case. Following the issuing of the report, the author has been invited to apply again for accreditation with the Press Gallery, if he so wishes.

With regard to case No. 694/1996 - Waldman, the Government of Canada informed the Committee by note of 3 February 2000, that matters of education fall under the exclusive jurisdiction of the provinces. The Government of Ontario has communicated that it has no plans to extend funding to private religious schools or to the parents of children that attend such schools, and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools. After receipt of the State party's reply the Committee organized a meeting with the State party's representative, which took place on 18 July 2000. A reference to this meeting will be included in the follow-up progress report, to be presented to the Committee in March 2001.

CCPR A/56/40, vol. I (2001)

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Canada: Eight Views concerning nine cases finding violations: 24/1977 - Lovelace (in Selected Decisions, vol. 1); for State party's follow-up reply, see Selected Decisions, vol. 2, annex I; 27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received; 167/1984 - Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished; 359/1989 and 385/1989 - Ballantyne and Davidson, and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished; 455/1991 - Singer (A/49/40); no follow-up reply required; 469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished; 633/1995 - Gauthier (A/54/40); for follow-up reply, see A/55/40, paragraph 607 and below; 694/1996 - Waldman (A/55/40); for follow-up reply, see A/55/40; paragraph 608 and below.

...

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

...

186. Canada: Following the Committee's Views in case No. 633/1995 - Gauthier, the Government of Canada informed the Committee on 20 October 1999 that it had appointed an independent expert to review the Press Gallery's criteria for accreditation as well as the author's application for accreditation. In order to address the Committee's concern that there be a possibility of recourse by individuals who are denied membership of the Press Gallery, in the future the Speaker of the House will be competent to receive complaints and appoint an independent expert to report to him about the validity of the complaint. By submission of 4 March 2000, the Government provided the Committee with a copy of the expert report on the Press Gallery's criteria for accreditation and their application in the author's case. The Special Rapporteur met with a representative of Canada on 18 July 2000. The Secretariat has requested the State party to provide a copy of the Speaker's decision in the author's case. By letters of

9 October 2000 and of 7 March 2001, the author complains that the Views have not been implemented by the State party and refers to a letter he received from the House of Commons Law Clerk advising him that the Speaker of the House plays no part in respect of applications to the Press Gallery and that he would have to reapply with the Press Gallery. The author alleges that no appeal process is available.

187. With regard to case No. 694/1996 - Waldman, the Government of Canada informed the Committee, by note of 3 February 2000, that matters of education fall under the exclusive jurisdiction of the provinces. The Government of Ontario has communicated that it has no plans to extend funding to private religious schools or to the parents of children that attend such schools, and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools. On 17 February 2000, the author sent a critical response to the State party's reply. He met with the Special Rapporteur on Monday, 13 March 2000. The Special Rapporteur met with a representative of Canada on 18 July 2000. In a further letter, dated 14 February 2001, the author again expresses his dissatisfaction with the State party's failure to implement the Views and asks the Committee to discuss Canada's non-compliance at a public meeting or in the context of a follow-up visit. He indicates that the Minister of Education of Ontario has stated that the Government of Ontario "is not prepared to adopt the alternatives suggested by the UNHRC for complying with the decision".

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Canada: Views in nine cases with findings of violations:

24/1977 - Lovelace (in Selected Decisions, vol. 1); for State party's follow-up reply, see Selected Decisions, vol. 2, annex I;

27/1978 - Pinkney (in Selected Decisions, vol. 1); no follow-up reply received;

167/1984 - Ominayak (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - Ballantyne and Davidson - 385/1989, and McIntyre (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - Singer (A/49/40); no follow-up reply required; 469/1991 - Ng (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - Gauthier (A/54/40); for follow-up reply, see A/55/40, paragraph 607; A/56/40, paragraph 186; and paragraph [236] below;

694/1996 - Waldman (A/55/40); for follow-up reply, see A/55/40, paragraph 608, and A/56/40, paragraph 187, and paragraph [237] below.

...

229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

236. Canada: With regard to case No. 633/1995 - Gauthier (A/54/40), the author, by letter of 24 November 2001, informed the Committee that he had been granted a temporary six-month pass by the Canadian Parliamentary Press Gallery Corporation, which he had accepted under protest for economic reasons. He had been denied a permanent pass, with membership of the Press Gallery Corporation still required. The author stated that the Independent Expert appointed by the Speaker to review the author's case was summary and superficial, and came to the opposite conclusions of the Committee. The Speaker now regarded the matter closed. By letter of 23 February 2002, the author informed the Committee that the State party had still failed to comply with the Committee's Views. The author has been advised that all dealings must be with the private Press Gallery organization, and had still only been provided a temporary pass with limited benefits. He sought the Committee's determination of the amount of damages that the State party should pay him.

237. With regard to case No. 694/1996 - Waldman (A/55/40), the author informed the Committee by letter of 20 March 2002 that the State party had failed to take any measures to correct the discrimination identified by the Committee and asked the Special Rapporteur to follow up again with the State party's authorities.

...

CHAPTER VI. Follow-up activities under the Optional Protocol

...

223. The previous annual report of the Committee[1] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Canada: Views in nine cases with findings of violations:

24/1977 - *Lovelace* (in *Selected Decisions*, vol. 1); for State party's follow-up reply, see *Selected Decisions*, volume 2, annex I;

27/1978 - *Pinkney* (in *Selected Decisions*, vol. 1); no follow-up reply received;

167/1984 - *Ominayak* (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - *Ballantyne and Davidson* and 385/1989 - *McIntyre* (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - *Singer* (A/49/40); no follow-up reply required;

469/1991 - *Ng* (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - *Gauthier* (A/54/40); for follow-up reply, see A/55/40, paragraph 607, A/56/40, paragraph 186 and A/57/40, paragraph 236;

694/1996 - *Waldman* (A/55/40); for follow-up reply, see A/55/40, paragraph 608, A/56/40, paragraph 187 and A/57/40, paragraph 237.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40*(A/57/40), vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General*

Assembly
in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

...

CANADA:

Gauthier v. Canada, Case no. 633/1995, Views adopted on 7 April 1999

Violations found: Article 19, paragraph 2

Issues of case: Access to press facilities of Parliament

Remedy recommended: An independent review of the author's application to have access to the press facilities of Parliament.

Deadline for State party follow-up information: 6 July 1999

Follow-up information received from State party: See previous Follow-up Report (CCPR/C/71/R.13)

Follow-up information received from author: See previous Follow-up Report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol.1, para. 236). By letter of 24 November 2001, the author informed the Committee that he had been granted a temporary six-month pass by the Canadian Parliamentary Press Gallery Corporation, which he had accepted under protest for economic reasons. He had been denied a permanent pass, with membership of the Press Gallery Corporation still required. The author stated that the Independent Expert appointed by

the Speaker to review the author's case was summary and superficial, and came to opposite conclusions than those of the Committee. The Speaker now regarded the matter closed. By letter of 23 February 2002, the author informed the Committee that the State party had still failed to comply with the Committee's Views. The author has been advised that all dealings must be with the private Press Gallery organization, and had still only been provided a temporary pass with limited benefits. He sought the Committee's determination of the amount of damages that the State party should pay him. By letter of 15 April 2002, he again informed the Committee that its Views have not been implemented by the State party.

Special Rapporteur's recommendations: A copy of the Independent Expert's/Speaker's report should be requested from the State party.

Waldman v. Canada, Case no. 694/1996, Views adopted on 3 November 1999

Violation found: Article 26

Issues of case: Discrimination on the basis of religion in the distribution of subsidies to schools

Remedy recommended: An effective remedy eliminating this discrimination.

Deadline for State party follow-up information: 3 February 2000

Follow-up information received from State party: See previous follow-up report of 20 March 2001 (CCPR/C/71/R.13) or the Committee's Annual Report (A/56/40, Vol.1, para.187).

Follow-up information received from author: See previous the follow-up report of 20 March 2001 (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol. 1, para. 237). By letters of 20 March 2002 and 2 January 2004, the author reiterated that the Views had still not been implemented and requested to meet again with the Rapporteur. He also requested the Special Rapporteur to meet again with a representative of the State party.

Special Rapporteur's recommendation: A meeting should be arranged with a State party representative.

Judge v. Canada, Case no. 829/1998, Views adopted on 5 August 2003

Violations found: Articles 6, paragraph 1, and 2, paragraph 3.

Issues of case: Deportation to face the death penalty

Remedy recommended: To make such representations as are possible to the receiving state to

prevent the carrying out of the death penalty on the author.

Deadline for State party follow-up information: 13 November 2003

Follow-up information received from State party: By note verbale of 17 November 2003, the State party informed the Committee that on 7 October 2003 pursuant to a request received by Amnesty International, the federal government officials, representatives of Amnesty and the author's counsel met to hear Amnesty's views on how Canada should give effect to the Views. On 24 October 2003, the Canadian Consul General in Buffalo contacted the Governor of Pennsylvania and raised the Judge case with him. On 7 November 2003, the Government of Canada delivered in person a diplomatic note to the Government of the United States, which included a copy of the Views and requested the United States not to carry out the death penalty against Mr. Judge. It also requested that this request not to carry out the death penalty be transmitted to relevant state authorities expeditiously. The State party informed the Committee that since the Supreme Court of Canada's decision in U.S. v. Burns and Rafaey in 2001, it has been in substantial compliance with the Committee's interpretation of article 6, paragraph 1 as stated in its Views. The Views have been posted on the Department of Canadian Heritage website.

The State party notes that the Committee's interpretation of article 6, paragraph 1, goes beyond the language in resolution 2003/67 of the 59th session of the Commission on Human Rights. It expresses concern over the Committee's statement that the rights in the Covenant should be interpreted by reference to the time of the Committee's examination, and not by reference to the time the alleged violation took place. It asserts that compliance with the Covenant should not be assessed against an interpretation of Covenant rights that had no currency at the time of the alleged violation and thus could not have been reasonably anticipated at the time of their actions.

Follow-up information received from author: By letter of 1 December 2003, author's counsel expressed doubts about the effectiveness of the State party's attempts to have the author removed from death row. He has received no information either on the nature of the intervention made by the State party nor its outcome.

Special Rapporteur's recommendation: State party should be requested to provide any further update received from the US authorities on the author's situation.

...

CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York,
on Friday, 2 April 2004, at 10 a.m.

...

Follow-up on Views under the Optional Protocol

...

3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

...

6. Mr. Solari Yrigoyen said that the principle should be made clear that there was no procedure for reconsideration of the Committee's Views except in case of obvious error. In case No. 701/1996 (*Gómez Vásquez v. Spain*), the Committee's firmness had ultimately led the State party to change its legislation. With regard to case No. 848/1999 (*Rodríguez Orejuela v. Colombia*) and case No. 859/1999 (*Jiménez Vaca v. Colombia*), he found it odd that the State party was awaiting the Committee's response before implementing the Views. He recalled that in the consideration of the State party's report concerns had been expressed about the Committee of Ministers that had the power to recommend whether or not to implement the Committee's Views. In case No. 633/1995 (*Gauthier v. Canada*) it appeared that the State party had not complied with the Committee's Views. He agreed that such cases should be mentioned in the Committee's report.

...

12. **Mr. Shearer** said that he agreed with Mr. Scheinin's proposals. With reference to case No.

694/1996 (*Waldman v. Canada*), a further meeting with the State party would be pointless and counterproductive, since the case involved a constitutional issue beyond the power of the federal Government of Canada to resolve.

...

CCPR A/59/40 vol. I (2004)

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee[1] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Canada: Views in 11 cases with findings of violations:

24/1977 - *Lovelace* (in *Selected Decisions*, vol. 1); for State party's follow-up reply, see *Selected Decisions*, volume 2, annex I;

27/1978 - *Pinkney* (in *Selected Decisions*, vol. 1); no follow-up reply received;

167/1984 - *Ominayak* (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - *Ballantyne and Davidson* and 385/1989 - *McIntyre* (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - *Singer* (A/49/40); no follow-up reply required;

469/1991 - *Ng* (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - *Gauthier* (A/54/40); for follow-up reply, see A/55/40, paragraph 607, A/56/40, paragraph 186 and A/57/40, paragraph 236. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a copy of the independent expert's report should be requested of the State party. This report was provided to the Special Rapporteur after consultations with the State party during the eighty-first session. Subsequently, the Special Rapporteur recommended to the Committee that this case should no longer be considered under the follow-up procedure;

694/1996 - *Waldman* (A/55/40); for follow-up reply, see A/55/40, paragraph 608, A/56/40, paragraph 187 and A/57/40, paragraph 237 and

paragraph 234 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a meeting should be arranged with a State party representative. During the eighty-first session follow-up consultations were held during which the State party's representative reiterated the State party's position expressed in previous correspondence;

829/1998 - *Judge* (A/58/40); for follow-up, see paragraph 235 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a further update on the author's situation in the United States should be requested of the State party. Following consultations between the State party and the Special Rapporteur during the eighty-first session, the State party's representative indicated his intention to provide the Special Rapporteur with further information, to the extent possible, of the author's current situation in the United States;

1051/2002 - *Ahani* (annex IX); follow-up reply not yet due.

...

OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD, SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

237. Canada: with regard to case No. 694/1996 - *Waldman* (A/56/40 and A/57/40): on 2 January 2004, the author reiterated that the Views had still not been implemented.

238. Case No. 829/1998 - *Judge* (A/58/40): on 17 November 2003, the State party informed the Committee that on 7 October 2003, pursuant to a request received by Amnesty International, federal government officials, representatives of Amnesty and the author's counsel met to hear Amnesty's views on how Canada should give effect to the Views. On 24 October 2003, the Canadian Consul General in Buffalo, New York, contacted the Governor of Pennsylvania and raised the *Judge* case with him. On 7 November 2003, the Government of Canada delivered a diplomatic note to the Government of the United States, which included a copy of the Views and

requested the United States not to carry out the death penalty against Mr. Judge. It also requested that the request not to carry out the death penalty be transmitted to relevant state authorities expeditiously. The State party informed the Committee that since the Supreme Court of Canada's decision in *United States v. Burns and Rafaey* in 2001, it had been in substantial compliance with the Committee's interpretation of article 6, paragraph 1, as stated in its Views. It stated that the Views had been posted on the Department of Canadian Heritage web site.

239. The State party is of the view that the Committee's interpretation of article 6, paragraph 1, goes beyond the language in Commission on Human Rights resolution 2003/67. It expressed concern over the Committee's statement that the rights in the Covenant should be interpreted by reference to the time of the Committee's examination, and not by reference to the time the alleged violation took place. It asserted that compliance with the Covenant should not be assessed against an interpretation of Covenant rights that had no currency at the time of the alleged violation and thus could not have been reasonably anticipated at the time of its actions. By letter of 1 December 2003, author's counsel expressed doubts about the effectiveness of the State party's attempts to have the author removed from death row. He has received no information either on the nature of the intervention made by the State party nor its outcome.

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location[a]	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Canada (11)	24/1977, *Lovelace* Selected Decisions, vol. 1	X Selected Decisions, vol. 2, annex 1	X			
	27/1978, *Pinkney* Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al*. A/45/40	X A/59/40*				X
	**Note*: According to this report, information was provided on 25 November 1995, but was unpublished. It appears from the Follow-up file that in this response, the State party states that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95-square-mile reserve. Negotiations were still ongoing as to whether the Band should receive additional compensation.					
	359/1989, *Ballantyne and Davidson* A/48/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 2 December 1993, but was unpublished. It appears from the Follow-up file that in this response, the State party stated that sections 58 and 68 of the Charter of the French Language, the legislation which was central to the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994.					
	385/1989, *McIntyre* A/48/40	X*	X			
	**Note*: See footnote on case No. 359/1989 above.					
	455/1991, *Singer* A/49/40	Finding of a violation was considered sufficient	X			
	469/1991, *Ng* A/49/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 3 October 1994, but was unpublished. The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provided that an individual sentenced to capital punishment may choose between gas asphyxiation and lethal injection. In the event of a future request for an extradition where the death penalty is possible, the Views of the Committee in this communication will be taken into account.					
	633/1995, *Gauthier* A/54/40	X A/55/40, A/56/40, A/57/40	X A/59/40			

	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40		X		X
	829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40			X* A/60/40
	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					
	1051/2002, *Ahani* A/59/40	X A/60/40		X		X* A/60/40
	**Note*: The State party went some way towards implementing the Views: the Committee has not specifically said that implementation was satisfactory.					

[a] The location refers to the document symbol of the *Official Records of the General Assembly*, *Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/59/40).

...

State party	*CANADA*
Case	Judge, 829/1998
Views adopted on	5 August 2003
Issues and violations found	Deportation to face the death penalty - articles 6, paragraph 1, and 2, paragraph 3.
Remedy recommended	To make such representations as are possible to the receiving State to prevent the carrying out of the death penalty on the author.
Due date for State party response	13 November 2003
Date of reply	8 August 2004 - had previously replied on 17 November 2003.
State party response	Following the Special Rapporteur's request to the State party to provide an update from the United States authorities on the author's situation, the State party reiterated its response outlined in the Follow-up Report (CCPR/C/80/FU1) and the Annual Report (CCPR/C/81/CRP.1/Add.6). It added that a stay of execution was issued by the United States District Court for Eastern Pennsylvania in October 2002, and no date has been set for his execution.

State party	*CANADA*

Case	Mansour Ahani, 1051/2002
Issues and violations found	Removal to a country where the author risks torture and/or execution - articles 7, 9, paragraph 4, 13.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, the State party. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.
Due date for State party response	3 November 2004
Date of reply	3 September 2004
State party response	The State party contests the Committee's Views and submits that it has not violated its obligations under the Covenant. There has been no violation of its obligations in deporting the author while the case is under consideration by the Committee, as neither interim measures requests or indeed the Committee's Views are binding on the State party. As there was no substantial risk of irreparable harm upon removal, and because the author posed a threat to the security of Canada, removal could not be delayed pending the Committee's decision. Despite the non-binding nature of interim measure requests the State party ensures the Committee that it always gives, as it did in this case, careful consideration to them, and will accept them wherever possible. This approach should not in any way be construed as a diminution of Canada's commitment to human rights or its ongoing collaboration with the Committee. Decisions on interim measure requests will be made on a case-by-case basis. As to the finding of a violation of article 9, paragraph 4, as the

period of nine and a half months after the final resolution of the constitutionality of the security certificate procedure was too long, the State party reiterates the points made in its submission prior to consideration, that the delay of nine and a half months was attributable to the author. It submits that the reasonableness hearing was prolonged between July 1997 and April 1998 to accommodate the author's counsel of choice. Neither the author nor his counsel expressed any concern with the delay and never requested the Court to expedite the hearing.

Equally, the State party contests the finding of a violation of article 13, submitting that the expulsion decision was confirmed to be in accordance with law by the Supreme Court and that the author did not argue otherwise. The author was permitted to submit reasons against his expulsion and these submissions were considered by the Minister prior to concluding that he constituted a danger to the security of Canada and that he faced only a minimal risk of harm upon deportation. The author was aware that the information used in the determination of the reasonableness of the security certificate process was to be the basis of the assessment of the danger he represented to the security of Canada. In the State party's view, article 13 does not require that he be given all the information available to the State and, considering it was a national security case, the process was fair. However, in order to simplify the process with respect to whether a person who is a danger to the security of Canada may be removed from Canada, the State party confirms that it now affords to all persons the same "enhanced procedural guarantees". In particular, all documents used to form the danger opinion are now provided to the person redacted for security concerns and they are entitled to make submissions.

The State party submits that its determination that the author did not face a substantial risk of torture upon removal has been confirmed by subsequent events, including a conversation between a Canadian representative and the author's mother, the latter of whom confirmed that the author was in good health, and a visit by the author to the Canadian embassy in Tehran on 1 October 2002, during which he did not complain of being ill-treated.

For the aforementioned reasons, the State party disagrees that it should make any reparation to the author or that it has any obligations to take further steps in this case. Nevertheless, in October 2002, Canada indicated to Iran that it expects it to comply with its international human rights obligations, including with respect

to the author.

In its reply to the list of issues of the Committee against Torture, the State party submitted that it was in full compliance with its international obligations in this case and that it did not violate its obligations under article 13 Covenant. The Supreme Court of Canada concluded that the process accorded to the author was consistent with the principles of fundamental justice guaranteed by the Canadian Charter of Rights and Freedoms. The Court was satisfied that Ahani was fully informed of the Minister's case against him and given a full opportunity to respond. It also concluded that the procedures followed did not prejudice the author. The decision to remove was confirmed to be in accordance with law by the Supreme Court of Canada. Canada, on the basis of all of the evidence available to it, including Ahani's testimony and extensive submissions made by his counsel, concluded that the risk that the author would face upon return to Iran was only "minimal". Indeed, Canada's decision in this regard was upheld at all levels of judicial review and appeal. The Supreme Court of Canada held that the Minister's decision that the author did not face a substantial risk of torture on deportation was "unassailable."

The author was able to submit reasons against his removal. The decision to remove Ahani was the result of the balancing between the danger the author represented to the security of Canada and the risk he would face if returned to his country. This process culminated in the opinion issued by the Minister that Ahani constitutes a danger to the security of Canada and that he faced only a minimal risk of harm upon deportation. In order to simplify the process with respect to whether a person who is a danger to the security of Canada may be removed from Canada, the Canadian government now affords all such persons the same enhanced procedural guarantees. In particular, all documents used to form the danger opinion are now provided to the person redacted for security concerns and they are entitled to make submissions.

CCPR, CCPR/C/SR.2366 (2006)

Human Rights Committee
Eighty-sixth session
Summary record of the second part (public)* of the 2366th meeting
Held at Headquarters, New York, on Thursday, 30 March 2006, at 3 p.m.

Follow-up on Views under the Optional Protocol

Progress report of the Special Rapporteur for Follow-up on Views

1. Mr. Ando (Special Rapporteur for Follow-up on Views) introduced his report, which compiled information received during the eighty-fifth and eighty-sixth sessions of the Committee. He wished to request decisions from the plenary in relation to two cases.

2. In the case of Ahani v. Canada (Communication No. 1051/2002 (pp. 11-12)), noting that following the author's deportation to Iran the Canadian authorities had followed his situation closely, he proposed that the Committee's comments should indicate that the State Party's response had been satisfactory and the Committee did not intend to consider the matter any further.

...

10. Sir Nigel Rodley, turning to the case of Ahani v. Canada (Communication No. 1051/2002 (pp. 11-12)) said there had been no real improvement since the State party's previous unsatisfactory response; the State party had last spoken with the author's mother in October 2003, and he found the reference to possible assistance from the Special Rapporteur on torture almost offensive. Although the Committee should decide not to consider the matter any further, given that no adverse information had been received, he did not believe that the Committee's comments should describe the State Party's response as satisfactory.

11. Mr. Bhagwati expressed support for Sir Nigel Rodley's position.

12. The Chairperson said the State party's response was certainly not satisfactory; moreover, she found the reference to the Special Rapporteur on torture very flippant. The Committee's comments should be amended to read "The Committee does not intend to consider this matter any further in the current circumstances under the follow-up procedure but may take it up again in the future if circumstances warrant".

13. Mr. Wieruszewski expressed concern that precise information on the status of cases was not always available. For example, in the case of Ominayak v. Canada (Communication No. 167/1984 (pp. 10-11)) he wondered if there were any new factual elements; with regard to the case of Malakhovsky and Pikul v. Belarus (Communication No. 1207/2003 (pp. 8-10)), the State party continued to refute the Committee's Views yet despite the apparent lack of any new information, the State party's response had been sent to the author for comment. He asked if

there was any point in sending the State party's response to the author if there was no new information and wondered whether the Committee needed to review its procedures for follow-up on Views.

14. The Chairperson noted that the Bureau agreed with the need to review follow-up procedures and was asking interested experts to sign up to participate in discussions on how to make follow-up procedures more effective. With a view to having the progress report as up-to-date as possible, it could be noted, for example, that the Committee had raised the case of Ominayak v. Canada (Communication No. 167/1984) in its concluding observations on the last periodic report of Canada in October.

15. Sir Nigel Rodley said the current procedure seemed to be that either the Committee was satisfied, at least on the facts, or the response had been unsatisfactory, in which case consideration of the matter would continue. With regard to the Malakhovsky and Pikul v. Belarus case (Communication No. 1207/2003), perhaps the comment could be worded to express the Committee's regret at the State Party's refusal to address the issue of the compatibility of the application of its legislation with the Covenant, although any amendment could likewise be postponed pending the Committee's review of its follow-up procedures.

16. Mr. Lallah, referring to the Ominayak case, said he supported the Chairperson's suggestion that the Committee's observations on its dialogue with Canada should be included in the comments section. It would also be useful to include the date when the State party had been requested to provide an update, although only if the request had been made subsequent to the dialogue with the State party.

17. The Chairperson said that the request had been made after the dialogue and the date could therefore be mentioned.

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CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
SUMMARY RECORD OF THE 2392nd MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

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15. Mr. ANDO, turning to Ominayak v. Canada (communication No. 167/1984), said that there had been no new developments. With regard to Waldman v. Canada (communication No. 694/1996), the State party had argued that under Canada's federal system education matters fell within the exclusive jurisdiction of the provinces.

16. Ms. WEDGWOOD said the State party was well aware that the Covenant applied to all entities of federal States; its response was highly unsatisfactory. The Committee might wish to encourage the Federal Government to issue a public statement acknowledging the existence of a violation of the Covenant, thus exerting pressure on the provincial government concerned to take remedial action.

17. Mr. ANDO suggested including a reference to article 50 of the Covenant in the Committee's decision.

18. The CHAIRPERSON said that the Special Rapporteur could publicly acknowledge the violation at the forthcoming press conference, and that approach could be incorporated in the Committee's working methods and used as a precedent for similar situations in the future.

19. Ms. WEDGWOOD said that since the Federal Government of Canada had stated that it had no authority in the present case, she wondered whether the Committee could request a meeting with the authorities of the Province of Ontario.

20. Mr. SHEARER said that the Committee could submit a request to the Federal Government to provide information from the Ontario authorities on the problems they had encountered in implementing the Committee's decision. A similar approach had been taken in a previous case regarding Australia, in which information had been requested from the Government of Tasmania.

21. Mr. O'FLAHERTY supported the views expressed by Ms. Wedgwood and Mr. Shearer.

22. Mr. AMOR expressed concern that such an approach would weaken the impact of article 50, which stated that the Covenant applied to "all parts of federal States without any limitations or exceptions".

23. The CHAIRPERSON said that, in her view, the impact of article 50 would not be weakened if the Committee contacted the Federal Government to request information from the Ontario authorities. Pursuant to article 50, the Committee could request information from authorities other than a federal Government, but could not bypass a federal Government when doing so. The most suitable solution to the problem would be that suggested by Mr. Shearer.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	**Communication number, author and location**	**Follow-up response received from State party and location**	**Satisfactory response**	**Unsatisfactory response**	**No follow-up response received**	**Follow-up dialogue ongoing**
...						
Canada (11)	24/1977, *Lovelace* Selected Decisions, vol. 1	X Selected Decisions, vol. 2, annex 1	X			
	27/1978, *Pinkney* Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al.* A/45/50	X A/59/40,* A/61/40				X
	* *Note*: According to this report, information was provided on 25 November in 1995 (unpublished). It appears from the Follow-up file that in this response, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95 square mile reserve. Negotiations were still ongoing as to whether the Band should receive additional compensation.					
	359/1989, *Ballantyne and Davidson* A/48/40	X A/59/40*	X			
	*_Note_: According to this report, information was provided on 2 December 1993, but was unpublished. It appears from the Follow-up file that in this response, the State party stated that sections 58 and 68 of the Charter of the French					

Language, the legislation which was central to the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994.					
385/1989, *McIntyre* A/48/40	X*	X			
**Note*: See footnote on Case 359/1989 above.					
455/1991, *Singer* A/49/40	Finding of a violation was considered sufficient	X			
469/1991, *Ng* A/49/40	X A/59/40*	X			
**Note*: According to this report, information was provided on 3 October in 1994 (unpublished). The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provides that an individual sentenced to capital punishment may choose between gas asphyxiation and lethalinjection. In the event of a future request for an extradition with the possibility of the death penalty, the Views of the Committee in this communication will be taken into account.					
633/1995, *Gauthier* A/54/40	X A/55/40, A/56/40, A/57/40	X A/59/40			
694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X		X
829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40, A/61/40			X* A/60/40

	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					
	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X		X* A/60/40
	**Note*: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.					
...						

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

State party	**CANADA**
Case	Judge, 829/1998
Views adopted on	5 August 2002
Issues and violations found	Bearing in mind that the State party has abolished capital punishment, the decision to deport the author to a state where he is under sentence of death without affording him the opportunity to avail himself of an available appeal, was taken arbitrarily and in violation of article 6, paragraph 1, alone and read together with article 2, paragraph 3.
Remedy recommended	An appropriate remedy which would include making such representations as is possible to the receiving state to prevent the carrying out of the death penalty on the author.
Due date for State party response	37936
Date of State party's response	9 May 2006 (Previously responded on 8 August 2004 and 17 November 2003)
State party response	On 9 May 2006, and following the Special Rapporteur's request to the State party to provide an update from the United States authorities on the author's situation, the State party reiterated its response outlined in the Follow-up Report (CCPR/C/80/FU1) and the Annual Report (CCPR/C/81/CRP.1/Add.6). It added that on 18 January 2006, it had sent a diplomatic note to the United States reiterating its previous note and requesting an update on the status of Mr. Judge. The United States acknowledged receipt of the note and forwarded it to the Governor of Pennsylvania, for his consideration. To date the

	Government has not received a reply but to the best of its knowledge no date has been set for his execution. The State party requests that this case be removed from consideration under the follow-up procedure.
Author's response	In a letter received on 12 October 2005 the author had informed the Committee that no measures have been taken by Canada to implement the Committee's recommendation.
Case	Ominayak, 167/1984
Views adopted on	26 March 1990
Issues and violations found	Minority rights - Article 27
Remedy recommended	Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue. The State party proposes to rectify the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant.
Due date for State party response	No record of date
Date of State party's response	25 November 1995
State party response	The Committee will recall that in a follow-up response of 25 November in 1995, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95 square mile reserve. At the time, negotiations were still ongoing as to whether the Band should receive additional compensation.
Author's response	Many petitions have been received in the months of January and February 2006, from various individuals in France (relationship to authors unknown), requesting the Committee to follow-up on this case and claiming that the current situation of the Lubicon Lake Band is "intolerable".
Committee's Decision	Pursuant to the Committee's consideration of the State party's report, during the eighty-fifth session, the Committee adopted the following Concluding Observation with respect to this case:

	"The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue." (arts. 1 and 27). The Committee considered that "The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant." (CCPR/C/CAN/CO75).
Case	Waldman, 694/1996
Views adopted on	3 November 1999
Issues and violations found	Discrimination of funding in religious schools - Article 26.
Remedy recommended	Under article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide an effective remedy that will eliminate this discrimination.
Due date for State party response	5 February 2000
Date of State party's response	State party had responded on 3 February 2000 (see follow-up information in A/55/40, A/56/40, A/57/40, A/59/40)
State party response	In its note of 3 February 2000, the State party informs the Committee that matters of education fall under the exclusive jurisdiction of the provinces. The Government of Ontario has communicated that it has no plans to extend funding to private religious schools or to the parents of children that attend such schools, and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools.
Committee's Decision	Pursuant to the Committee's consideration of the State party's report, during the eighty-fifth session, the Committee adopted the following Concluding Observation with respect to this case, "The Committee expresses concern about the State party's responses

	relating to the Committee's Views in the case of *Waldman v. Canada*, (communication No. 694/1996), Views adopted on 3 November 1999), requesting that and effective remedy by granted to the author eliminating discrimination on the basis of religion in the distribution of subsidies to schools (arts. 2, 18 and 26)." The Committee considered that, "The State party should adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario." (CCPR/C/CAN/CO75).
Case	Mansour Ahani, 1051/2002
Views adopted on	23 March 2004
Issues and violations found	Removal to a country where the author risks torture and/or execution - Articles 7, 9, paragraph 4, 13.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, the State party. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.
Due date for State party response	3 November 2004
Date of State party's response	7 February 2006 (the State party had previously responded on 3 September 2004)
State party response	The Committee will recall, as set out in its 84th interim report, that the State party had contested the Committee's Views and submitted that it had not violated any of its obligations under the Covenant and neither interim measures requests nor the Committee's Views are binding on the State party. It provided detailed arguments disputing the Committee's findings. It disagreed that it should make any reparation to the author or that it has any obligations to take further steps in this

case. Nevertheless, in October 2002, Canada indicated to Iran that it expects it to comply with its international human rights obligations, including with respect to the author. In addition, it stated that in order to simplify the process with respect to whether a person who is a danger to the security of Canada may be removed from Canada, the Canadian government now affords all such persons the same enhanced procedural guarantees. In particular, all documents used to form the danger opinion are now provided to the person redacted for security concerns and they are entitled to make submissions.

On 7 February 2006, in response to the Secretariat for updated information on Mr. Ahani, the State party reiterated inter alia that the Canadian Embassy in Tehran visited Mr. Ahani in October 2002, and he did not complain of ill-treatment. That is October 2003, a Canadian representative spoke with his mother who said that he was well and since then the State party has had no further contact with him. The State party notes that Iran is a party to the ICCPR and as such it is bound to respect the rights set out in the Covenant. Canada considers that Iran would be in a better position to respond to any further requests from the Committee on the author status. In addition, there are special procedures, such as the Special Rapporteur on torture, that may be of assistance to Mr. Ahani if need be.

On the basis of the foregoing, the State party requests that this case be removed from the agenda of the Committee's Follow-up procedure.

Committee's Decision

The Committee does not currently intend to consider this matter any further under the follow-up procedure, but will examine it at a later stage if the situation changes.

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...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up

replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation ...	*Communication number, author and location*	*Follow-up response received from State party and location*	*Satisfactory response*	*Unsatisfactory response*	*No follow-up response received*	*Follow-up dialogue ongoing*
Canada (12)	24/1977, *Lovelace* Selected Decisions, vol. 1	X Selected Decisions, vol. 2, annex 1	X			
	27/1978, *Pinkney* Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al.* A/45/50	X A/59/40,* A/61/40, A/62/40				X A/62/40
	**Note*: According to this report, information was provided on 25 November in 1995 (unpublished). It appears from the Follow-up file that in this response, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95 square mile reserve. Negotiations were still ongoing as to whether the Band should receive additional compensation.						
	359/1989, *Ballantyne and Davidson* A/48/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 2 December 1993, but was unpublished. It appears from the Follow-up file that in this response, the State party stated that sections 58 and 68 of the Charter of the French Language, the legislation which was central to the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994.						
	385/1989, *McIntyre* A/48/40	X*	X			
	**Note*: See footnote on Case 359/1989 above.					
	455/1991, *Singer*	Finding of a violation	X			

State party and number of cases with violation	*Communication number, author and location*	*Follow-up response received from State party and location*	*Satisfactory response*	*Unsatisfactory response*	*No follow-up response received*	*Follow-up dialogue ongoing*
	A/49/40	was considered sufficient				
	469/1991, *Ng* A/49/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 3 October in 1994 (unpublished). The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provides that an individual sentenced to capital punishment may choose between gas asphyxiation and lethal injection. In the event of a future request for an extradition with the possibility of the death penalty, the Views of the Committee in this communication will be taken into account.					
	633/1995, *Gauthier* A/54/40	X A/55/40, A/56/40, A/57/40	X A/59/40			
	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X		X
	829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40, A/61/40			X* A/60/40
	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					
	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X		X* A/60/40
	**Note*: The State party went some way to implementing the Views: the Committee has not specifically said					

State party and number of cases with violation	*Communication number, author and location*	*Follow-up response received from State party and location*	*Satisfactory response*	*Unsatisfactory response*	*No follow-up response received*	*Follow-up dialogue ongoing*
	implementation is satisfactory.					
	1052/2002, *Tscholatch* A/62/40	Not yet due				
...						

CCPR, CCPR/C/SR.2480 (2007)

HUMAN RIGHTS COMMITTEE
Ninetieth session
SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2480th MEETING
Held at the Palais Wilson, Geneva,
on Thursday, 26 July 2007, at 3 p.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/90/R.4, distributed in the meeting room in English only)

6. The CHAIRPERSON invited the Special Rapporteur to present his report.

7. Mr. SHEARER (Special Rapporteur for follow-up on Views) said that the report covered communications for which the Committee had received information between its eighty ninth session (12-30 March 2007) and its ninetieth session (9-27 July 2007)...

...

9. Ominayak v. Canada (communication No. 167/1984) was a very complex case that had currently reached an impasse; negotiations had stalled, since neither party had been willing to accept the other's conditions. In its concluding observations on Canada's fifth periodic report (CCPR/C/CAN/CO/5), the Committee had already recommended that the State party should make every effort to resume negotiations, and the Committee on Economic, Social and Cultural Rights had reiterated that recommendation, with no better results. He considered that the Committee could only take note of the complexity of the issues raised by both parties, observe that they were still not in agreement, and urge them to continue their efforts to find a solution. The Committee should therefore take a decision to that effect.

...

15. The CHAIRPERSON invited members of the Committee to ask questions concerning the cases.

...

17. Mr. KÄLIN said that the Committee should take a firmer stance in the Ominayak

(Lubicon Lake) case, in keeping with the position that it had adopted in its concluding observations on Canada's fifth periodic report. Rather than ask the parties to "continue their efforts" to find a solution to the authors' claims, the Committee should urge them to "resume negotiations immediately"...

18. Mr. SHEARER (Special Rapporteur for follow-up on Views) approved the changes proposed by Mr. O'Flaherty. In the Ominayak case, the Committee could consider adopting firmer language, but that was likely to be a vain exercise...

19. The CHAIRPERSON thanked the Special Rapporteur for his report on a very important aspect of the Committee's work. If he heard no objection, he would take it that the Committee wished to adopt the report.

20. It was so decided.

...

CCPR, A/62/40 vol. II (2007)

Annex IX

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/61/40).

...

State party	**CANADA**
Case	Ominayak, 167/1984
Views adopted on	26 March 1990
Issues and violations found	Minority rights - Article 27
Remedy recommended	Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue. The State party proposes to rectify the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant.
Due date for State party response	No record of date
Date of reply	6 September 2006 (The State party had previously responded on 25 November 1995)

State party response

The Committee will recall that in a follow-up response of 25 November in 1995, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95 square mile reserve. At the time, negotiations were still ongoing as to whether the Band should receive additional compensation.

On 6 September 2006 (as was set out in the interim follow up

report from the eighty-eighth session), following a request for further information on the negotiations, the State party provided substantial information on the negotiations to date. It submitted that, according to paragraph 33 of its Views (set out under remedy recommended above), the Committee stated that its proposal to rectify the situation (the 1989 settlement offer) was an appropriate remedy within the meaning of article 2 of the Covenant. It submitted that the Lubicon Lake Cree have yet to accept the remedy that it has proposed.

According to the State party, it did not appear that there had been extensive logging in the area of land claimed by the Lubicons as traditional use territory since the Views. Oil and gas exploitation have been ongoing with the lands claimed by the Lubicon for traditional use since the Views. In October 2005, two operating partners signed an agreement with the Lubicon giving them a say in oil well drilling on the land which they claim. These companies have indicated that the Lubicon will be consulted by them on future drilling plans before they apply to the Province of Alberta for further permits.

Throughout the 1990s and into the present, serious attempts have been made by the Government of Canada to reach a negotiated settlement with the Lubicon Lake Cree. In the latest round of negotiations, which ended in 2003, every aspect of the State party's offer to the Lubicon Lake Cree was enhanced over previous offers, including the offer which was found by the Human Rights Committee to be appropriate to remedy the threat to the Lubicon Lake Cree under article 27 of the Covenant.

The Lubicon Lake Cree leadership, and its negotiators, have always insisted on a full settlement of all aspects of their claim. Even where there has been substantial agreement by all parties to the negotiations on many aspects of the Lubicon Lake Cree claim, a settlement has been beyond the reach of the parties. The negotiators for the Lubicon Lake Cree have indicated that the Lubicon Lake Cree are only willing to negotiate the self-government aspect of their claim on their terms, and consequently have been unwilling to continue to negotiate toward a settlement of those aspects of their claim which are relevant to this communication and for which there is substantial agreement, including the question of the amount and location of the land and the construction of a new community.

According to the State party, since 2003, the negotiators for the

Lubicon Lake Cree have been unwilling to reopen negotiations. In 2005, they declined an offer from the State party for a partial settlement, which was made on the basis that it was without prejudice to the remaining, unresolved aspects of their claim.

The State party submitted that it is committed to a resolution of the Lubicon Lake Cree's claim that is fair to all parties. And is committed to a resolution of those aspects of the Lubicon Lake Cree claim that would deliver the proposed remedy found appropriate by the Human Rights Committee in its Views. It is willing to resume negotiations at any time should the Lubicon Lake Cree be willing to return to the negotiating table.

Author's response

Many petitions were received in the months of January and February 2006, from various individuals in France (relationship to authors unknown), requesting the Committee to follow-up on this case and claiming that the current situation of the Lubicon Lake Band was "intolerable".

The State party's submission was sent to the authors on 22 September 2006, with a deadline until 22 November 2006 for comments. On 8 April 2007, the authors provided a substantial and detailed response to the State party's submission of 126 pages. On 5 May 2007 a summary of 36 pages was provided.

On the issue of logging, the authors submit that since the Views and following years of failure to consult, protests, broken agreements etc. there is currently a tenuous unstable "standoff" between the Lubicon and forestry companies. This standoff is continually being tested and challenged by the forestry companies and both levels of Canadian government. As to oil and gas exploitation, they submit that the process of agreement mentioned by the State party was not as straightforward as suggested by the State party but did finally culminate in a written agreement with the companies involved on 14 October 2005.

The authors confirm that there have been no negotiations since November 2003 and refer to the 1989 offer as a "take-it-or-leave-it" offer and that the Committee will have to consider whether it is an appropriate remedy. In their view, the recommendation of the Committee in its Views was advising both sides to continue to negotiate in good faith and this is consistent with what it says in its Concluding Observations of 2005. The authors contest that the subsequent offers made by the State party "enhanced" the 1989 offer and submit that in fact the 1992

"re-packaged" version of the offer from 1989, when the impact of inflation was taken account, actually amounted to less than the 1989 offer. They deny that they refused to negotiate, but submit that the government negotiators tabled positions that they themselves refused to negotiate saying that they had no mandate to negotiate them. All that is required for negotiations to continue, they say, is for the government negotiators to return with a mandate to negotiate long-standing settlement items in good faith, including financial compensation and recognition of the right of self-government as part of a settlement of Lubicon land rights. They submit that the State party has ignored a number of written offers by them to return to the table on such terms. They state that the offer of partial settlement referred to by the State party from 2005 did not include key settlement items: economic development, financial compensation or self-government. No settlement, they submit, will be possible unless the State party is prepared to negotiate all outstanding settlement issues in good faith including financial compensation and self government as part of a settlement of Lubicon Land Rights. Thus, the authors submit that the Committee must clarify its position on the 1989 offer as set out in its Views - upon which Canada's position relies.

Committee's Concluding Observations

Pursuant to the Committee's consideration of the State party's report, during the eighty-fifth session, the Committee adopted the following Concluding Observation with respect to this case:

"The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue (arts. 1 and 27).

The Committee considered that "The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant." (CCPR/C/CAN/CO75)

[The Committee members may wish to note the following concluding observation made by the CESCR on this issue during

its 1-19 May 2006 session:

"38. The Committee strongly recommends that the State party resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the Covenant. The Committee also strongly recommends that the State party conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the Covenant."]

Committee's Decision

The Committee notes the complexity of the issues raised by both parties, observes that they are still not in agreement on an appropriate remedy and urges them to continue their efforts to find a solution to the authors' claims in conformity with the Covenant.

...

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE
Ninety-third session
SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL

...

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/93/R.5)

...

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

...

43. In the third case, there had been a misunderstanding on the part of the State party, Canada, which had been of the view that it was only required to respond to the complaint on admissibility rather than on the merits. When the Committee had decided the case, the State party had been displeased that the information it had prepared on the merits had not been taken into account. It had submitted a great deal of information on the merits, which included highly sensitive material. It had indicated that it could submit even more material, but hesitated to do so on grounds of privacy. It had, in addition, appended a copy of its responses to the Committee on the Rights of the Child, which had also considered the case. The State party's response had been transmitted to the author, who had replied that she expected the Committee to comment on the State party's arguments. Given the State party's explanations as to why it could not implement the Committee's decision, there was no longer any useful purpose in continuing dialogue with it, and the case could be considered moot.

...

52. Mr. IWASAWA, speaking on the question of the communication involving Canada, said that the State party's misunderstanding had been particularly unfortunate. While he agreed with the proposed decision by the Special Rapporteur that there was no purpose in continuing dialogue with the State party, it was unfortunate that the State party's response on the merits had not been taken into account in the Committee's decision.

...

55. Ms. PALM recalled that although the Committee had reminded Canada on several occasions that it should submit its comments on the merits of the case in question, it had failed to

respond. It was important to reflect that fact in the report, in order to demonstrate that the Committee had not dealt with the case prematurely. She requested that the words "despite being reminded on several occasions" should be inserted in the final paragraph of the Committee's decision on the case, after the words "The Committee regrets that". She agreed that there was no useful purpose in continuing dialogue with the State party.

The meeting rose at 1.05 p.m.

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VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an ex gratia basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special

Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Canada (12)	24/1977, *Lovelace* Selected Decisions, vol. 1	X Selected Decisions, vol. 2, annex 1	X			
	27/1978, *Pinkney* Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al.* A/45/50	X A/59/40,* A/61/40, A/62/40				X A/62/40
	**Note*: According to this report, information was provided on 25 November 1991 (unpublished). It appears from the follow-up file that, in this response, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $Can 45 million and a 95 square mile reserve. Negotiations were still ongoing as to whether the Lubicon Lake Band should receive additional compensation.					
Canada (*cont'd*)	359/1989, *Ballantyne and Davidson* A/48/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 2 December 1993 (unpublished). It appears from the follow-up file that, in this response, the State party stated that sections 58 and 68 of the Charter of the French Language, the legislation which was central to the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994.					
	385/1989, *McIntyre* A/48/40	X*	X			
	**Note*: See footnote on case 359/1989 above.					

	455/1991, *Singer* A/49/40	Finding of a violation was considered sufficient.	X			
	469/1991, *Ng* A/49/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 3 October 1994 (unpublished). The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provides that an individual sentenced to capital punishment may choose between gas asphyxiation and lethal injection. In the event of a future request for an extradition with the possibility of the death penalty, the Views of the Committee in this communication will be taken into account.					
	633/1995, *Gauthier* A/54/40	X A/55/40, A/56/40, A/57/40	X A/59/40			
Canada (*cont'd*)	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X		X
	829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40, A/61/40			X* A/60/40
	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					

	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X		X* A/60/40
	**Note*: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.					
	1052/2002, *Tcholatch* A/62/40	Not due				
...						

CCPR, A/63/40, vol. II (2008)

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

State party	*CANADA*
Case	*N.T., 1052/2002*
Views adopted on	20 March 2007
Issues and violations found	Interference with the author and her daughter's family life, failure to protect the family unit, violation of the author's and her daughter's rights to an expeditious trial and to fair hearing, articles 17, 23, 24, 14, paragraph 1.
Remedy recommended	Effective remedy, including regular access of the author to her daughter and appropriate compensation for the author.
Due date for State party response	3 July 2007
Date of reply	6 June 2008 (the State party had previously replied on 31 July 2007)
State party response	On 31 July 2007, the State party explained the reasons why it did not provide submissions following the author's second set of submissions in September 2003. The author's claims were formulated in such a broad, imprecise and sweeping manner that in order to have appropriately responded to them, the State party would have been forced to disclose an enormous amount of

highly sensitive personal information relating to the author, her daughter and the adoptive parents. Moreover, officials were operating under the assumption that the Committee would be rendering its views exclusively on admissibility. The State party regretted the fact that the Committee issued its views without the benefit of its submission on the merits. The State party claimed that the communication was without merit. The statement of facts submitted by the author and relied upon by the Committee was incomplete and contained errors. The State party provided a detailed chronology of events and comments regarding each of the Committee's findings. It did not contest admissibility. However, regarding the merits it requested the Committee to reconsider both its findings of violations of the Covenant and its recommendation for remedial action. All actions taken with respect to the placement and care of the author's daughter were undertaken according to the terms set out under the law and were subsequently confirmed by the courts, with a view to ensuring the best interests of the child.

Regarding the remedy proposed by the Committee, based on the historical hostility of the author towards the child's adoptive family, the State party stated that there was no prospect for an openness agreement between the birth parent and adoptive parents pursuant to 153.6 of the Child and Family Services Act (CFSA). Therefore, contact between the author and her birth daughter was not a remedy that can be pursued at law by Canada. Furthermore, the evidence before the Committee does not support an inference that reintroduction of access between this child and her birth parent would be in the child's best interests.

On 6 June 2008, the State party responded to the Committee' decision not to review the case. The State party submits that there has been no violation of article 17. It reminds the Committee that when J.T. was initially taken to the police station on 2 August 1997, the authorities came to realize that she had been beaten by N.T. and that this may not have been an isolated incident. In order to ensure the child's safety, a decision was made by the Catholic Children's Aid Society of Toronto (CCAST) to seek a three month temporary placement for J.T. The initial terms of access were direct and regular and in the State party's view not "extremely harsh". Visits were scheduled every Monday from 1.00 to 2.30 and every Thursday from 1.00 to 2.00. They were held in the CCAST office and supervised by the CCAST worker who was

either present in the room with N.T. and the child, or who observed from behind a one way mirror. Access by telephone between N.T. and J.T. was also permitted. Access was only terminated only after N.T. abducted J.T. during a scheduled access visit for which she was criminally convicted, after it was observed that J.T. exhibited signs of distress prior to access visits and after N.T. repeatedly refused to attend counselling (*Buckle v. New Zealand*, 858/1999). On 12 August 1998, the motion regarding the termination of access was heard by a court. Although N.T. was represented by counsel at the time, she chose to proceed with a hearing of the motion without the benefit of counsel. Following the hearing, the court terminated access pending the disposition of the protection application because termination of access was found to be in the best interests of the child.

The State party submits that there was no violation of articles 23 or 24 and that the Ontario Child and Family Services Act ("the CFSA") establishes clear criteria to enable the courts to apply the provisions of article 23. During the child protection trial, the judge had to determine the issue of whether J.T. should be declared a "Crown ward" for the purposes of adoption, rather than a "society wardship", where the presumption under the CFSA favoured access. In the determination of Crown wardship, there is a bias against access unless certain conditions exist. The reason for this is the concern that long term foster care plans with access to family members have been found to place a child in a loyalty bind which can seriously hamper a child's development and ability to form positive attachments. Such concerns were beginning to surface in J.T., who according to the specialist seemed to be in limbo and did not know where she belonged. Due to the unique concerns with respect to placing a child in permanent limbo, and recognizing that the context is Crown wardship for the purposes of adoption and not custody and access as between two divorced parents, as was the case in *Hendricks v. Finland* (201/1985), the State party submits that the Committee incorrectly applied the test in Hendricks and that the standard set out in the CFSA is in the best interest of the child.

The State party denies that article 14 applies to child protection proceedings. In any event, it submits that the proceedings were not unreasonably prolonged, as a significant cause of the length of the proceedings was the multiple motions etc. initiated by the

author and refers to the Committee's decision in *E.B. v. New Zealand* (1368/2005). It shares the concerns of the Committee with respect to the time it took to proceed to trial given the age of J.T. However, it submits that at no point was there a period of inactivity and points to the jurisprudence of the European Court of Human Rights in this respect. The State party submits that the criteria set out in the legislation in question was followed, and a determination was reached after having heard all the parties, including counsel for the child. The protection trial lasted 7 days and during that time 11 witnesses were called by the CCAST and a number of expert reports were put before the court. Thus, the national proceedings disclosed no manifest error, unreasonableness or abuse which would allow the Committee to evaluate the facts and evidence. The State party notes that J.T. was not independently represented before the Committee and therefore it was not in a position to take her best interests into account.

The State party also submits a copy of its response to the Committee on the Rights of the Child, in which it submits that re-instating access now, on the basis of the Committee's Views alone, which were adopted without any knowledge of the views of the child or her adoptive parents may be in contravention of article 3 (1) and 12 (2) of the Convention on the Rights of the Child.

Author's comments

The State party's response was sent to the author on 12 June 2008 within a deadline for comments of two months. On 18 June 2008, the author acknowledged receipt of the State party's submission and indicated that she expects the Committee to comment on the State party's arguments.

Committee's Decision

During the ninety-first session, the Committee regretted the State party's refusal to accept the Views. It reviewed the new submission sent by the State party and concluded that there were no grounds to reconsider the Views in the case. The Committee considered the dialogue ongoing.

During the ninety-third session, the Committee considered the State party's most recent response of 6 June 2008. It notes that the communication was submitted on behalf of both the mother and the child. It regrets that the State party had not responded on the merits of the case prior to its consideration by the Committee and

recalls that it was requested to provide such information on 10 December 2003. It also regrets that the State party is not willing to accept the Committee's Views, however, as it can see no useful purpose in pursuing a dialogue with the State party it does not intend to consider the communication any further under the follow-up procedure.

...

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an ex gratia basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party

and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Canada (12)	24/1977, *Lovelace* Selected Decisions, vol. 1	X Selected Decisions, vol. 2, annex 1	X			
	27/1978, *Pinkney* Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al.* A/45/50	X A/59/40,* A/61/40, A/62/40				X A/62/40
	**Note*: According to this report, information was provided on 25 November 1991 (unpublished). It appears from the follow-up file that, in this response, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $Can 45 million and a 95 square mile reserve. Negotiations were still ongoing as to whether the Lubicon Lake Band should receive additional compensation.					
	359/1989, *Ballantyne* and *Davidson* A/48/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 2 December 1993 (unpublished). It appears from the follow-up file that, in this response, the State party stated that sections 58 and 68 of the Charter of the French Language, the legislation which was central to the communication, will be modified by Bill 86 (S.Q. 1993, c. 40). The date for the entry into force of the new law was to be around January 1994.					

	385/1989, *McIntyre* A/48/40	X*	X			
	**Note*: See footnote on case 359/1989 above.					
	455/1991, *Singer* A/49/40	Finding of a violation was considered sufficient.	X			
Canada (*cont'd*)	469/1991, *Ng* A/49/40	X A/59/40*	X			
	**Note*: According to this report, information was provided on 3 October 1994 (unpublished). The State party transmitted the Views of the Committee to the Government of the United States of America and asked it for information concerning the method of execution currently in use in the State of California, where the author faced criminal charges. The Government of the United States of America informed Canada that the law in the State of California currently provides that an individual sentenced to capital punishment may choose between gas asphyxiation and lethal injection. In the event of a future request for an extradition with the possibility of the death penalty, the Views of the Committee in this communication will be taken into account.					
	633/1995, *Gauthier* A/54/40	XA/55/40, A/56/40, A/57/40	XA/59/40			

	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X		X
	829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40, A/61/40			X* A/60/40
	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					
	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X		X* A/60/40
	**Note*: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.					
	1052/2002, *Tcholatch* A/62/40	Not due				
...						

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

...

Follow-up on views under the Optional Protocol

...

2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

4. In case No. 1792/2008 (*Dauphin v. Canada*), she pointed out that, since she had dissented from the Committee's finding of violations of the Covenant, a Committee member who had shared the majority opinion should be present at her meeting with State party representatives, so that her dissenting view would not be cited in support of its dispute with the Committee's Views. With regard to case No. 612/1995 (*Arhuacos v. Colombia*), the Committee should reiterate its request for a response from the State party on its failure to prosecute any of the perpetrators involved in the torture and disappearance of the five authors, only two of which had received some compensation. Turning to case No. 1510/2006 (*Vojnović v. Croatia*), she suggested that the Committee should wait for a response from the author on whether he found the State party's allocation of an apartment comparable to his pre-war accommodation to be a satisfactory remedy.

...

17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

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...

Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

...

State party	*Canada*
Case	*Dauphin, 1792/2008*
Views adopted on	28 July 2009
Issues and violations found	Arbitrary and unlawful interference with the family, protection of the family - articles 17 and 23, paragraph 1, of the Covenant.
Remedy recommended	Effective remedy, including by refraining from deporting him to Haiti.
Due date for State party response	1 March 2010
Date of State party response	8 October 2009
State party response	The State party notes with satisfaction the Committee's findings that several of the author's claims are inadmissible. As to the findings of violations of articles 17 and 23, the State party submits that it cannot accept the Committee's reasoning or interpretation of these articles. It does agree with the reasoning set out in the individual opinions attached to the Views. For these reasons, it concludes that it is not in a position to implement this case and given the danger represented by Mr. Dauphin the State party deported him to Haiti on 5 October 2009.
Author's comments	None

Committee's Decision The Committee considers the dialogue ongoing.

...

Follow-up
(b) Jurisprudence - Action by State Party

Lovelace v. Canada

Communication No. 24/1977

6 June 1983

STATE PARTY RESPONSE

Response, dated 6 June 1983, of the Government of Canada to the views adopted by the Human Rights Committee on 30 July 1981 concerning:

Communication No. 24/1977*/ Sandra Lovelace

1.On 19 November 1982, the Secretary-General of the United Nations, in accordance with the request of the Human Rights Committee, at its seventeenth session, informed Canada of the Committee's wish to receive any pertinent information on measures taken by Canada in respect of the views adopted by the Human Rights Committee, on 30 July 1981, in regard to communication

No. R. 6/24. a/ In response to this request, Canada provides the following information:

Information on measures taken with respect to communication No. R.6/24

Introduction

2. In her communication to the Human Rights Committee on 29 December 1977, pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights, Sandra Lovelace indicated that on 23 May 1970 she lost her Indian status upon marrying a non-Indian, as a result of the operation of s.12(1)(b) of the Indian Act, R.S.C. 1970 c. I-6. Section 12(1)(b) reads as follows:

12.(1) The following persons are not entitled to be registered [as Indians], namely ...

(b) a woman who has married a person who is not an Indian ...

Sandra Lovelace therefore claimed to be a victim of a violation of the rights set forth in articles 2(1), 3, 23(1) and (4), 26 and 27 of the International Covenant on Civil and Political Rights.

3. However, because she had lost her Indian status before the Covenant and Optional Protocol came into effect in Canada on 19 August 1976, the Committee declined to consider whether article 26 of the Covenant, which guarantees the right to equality before the law and the equal protection of the law, had been violated (see para. 18 of the views it adopted in regard to communication No. R. 6/24). a/ Also, it held that the rights aimed at protecting family life and children were only indirectly at stake and, therefore, it did not find there to have been a contravention of article 23 (idem.). However, it concluded that the effects of her loss of status occurring after the Covenant came into force on her right to live on the reserve, a right which she desired to exercise because of the dissolution of her marriage, resulted in the particular circumstances of her case in a contravention of article 27 of the Covenant (see para. 17 of its views). a/ In particular, it held that the author of the communication had been denied the right, guaranteed by article 27, to persons belonging to minorities to enjoy her own culture and to use her own language in community with other members of her group.

Response of Canada to the views of the Human Rights Committee

(a) Amendment of the Indian Act

4. Although Canada was not found to be in contravention of article 26 of the Covenant by the Human Rights Committee, it nevertheless appreciates the concern of Indian women, and, indeed, of many other persons in Canada and elsewhere in the international community, that s.12(1)(b) of the Indian Act may constitute discrimination on the basis of sex. It notes that, in a recent communication to the Human Rights. Committee brought by Paula Sappier Sisson, the issue has again been raised of whether s.12(1)(b) of the Indian Act contravenes article 26 of the Covenant, in this case by a woman who married a non-Indian after the coming into force of the Covenant. Also, as a result of the decision of the Human Rights Committee in regard to communication No. R. 6/24 a/ brought by Sandra Lovelace, Canada is anxious to amend the Indian Act so as to render itself in fuller compliance with its international obligations pursuant to article 27 of the International Covenant on Civil and Political Rights.

5. Canada is committed to the removal from the Indian Act of any provisions which discriminate on the basis of sex or in some other way offend against human rights; it is also desirous that the Indian community have a significant role to play in determining what new provisions on Indian status the Indian Act should contain.

6. The issue of how Indian status should be defined in the Indian Act id, however, a matter of considerable controversy amongst Indian people. In order to expedite the amendment of the Indian Act, a Parliamentary Sub-Committee on Indian Women and the Indian Act was formed on 4 August 1982. This Committeettee conducted five days of hearings, in which it heard the testimony of 41 witnesses, most of whom were Indian persons. The Sub-Committee was addressed on 8 September 1982 by {he Honourable John C. Munro, Minister of Indian Affairs and Northern Development, who made at that time the following statement:

"The Federal Government's position on the issue is perfectly clear. We are committed to bring in amendments to the [Indian] Act that will end discrimination based on sex. An integral part of that commitment is to proceed to the drafting of amendments only after full and open consultation with the Indian people."

7. On 21 September 1982, the Sub-Committee tabled its report, a copy of which is appended to the present document for the consideration of the Human Rights Committee. b/ It recommended among other things that the Indian Act should be amended, so that Indian women no longer lose their Indian status upon marrying non-Indians (p. 39 of the report), and that Indian women who had previously lost their status should upon application, be entitled to regain it (pp. 40-41 of the report). Moreover, it recommended that persons who regain their Indian status also be entitled to regain their band membership (pp. 40-41 of the report), in which case they will be entitled to live on the reserve and participate in the life of the Indian community. The Sub-Committee also recommended that Parliament provide sufficient funds to make these measures of reinstatement feasible (pp. 41-42 of the report).

8. The report was greeted favourably by the Minister of Indian Affairs and Northern Development, although he expressed some concern that many interested Indian people had not had a chance to appear before the Sub-Committee. He reiterated, however, the view of Canada that the amendment of the Indian Act so as to remove any provisions discriminating on the basis of sex is a matter of urgency. The necessary steps are now being taken to develop legislation to amend the Indian Act.

(b) Enactment of the Canadian Charter of Rights and Freedoms

9. In April 1982, the Canadian Charter of Rights and Freedoms came into effect as part of the constitution of Canada. A copy of the Charter is appended to this document for the consideration of the Human Rights Committee. b/ Section 15(1) of the charter, which comes into effect in April 1985, reads as follows:

"15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Thus, as Of April 1985, there will be an available domestic remedy in Canada for persons who feel they have been discriminated against on the basis of sex by federal laws. The enactment of the charter is an indication of the reality of Canada's respect for human rights, and provides an additional reason for Canada to be anxious to amend any laws which offend against human rights. The Federal Government is at present undertaking a review of all its legislation to ensure that any laws which are inconsistent with the charter are amended or repealed.

10. Sections 27 and 28 of the charter, already in effect, are also of relevance to any claim by an

Indian woman that her human rights have been violated by s.12(1)(b) of the Indian Act. Section 27 is a constitutional recognition of the value of the diverse cultural heritages of Canadians, and s.28 espouses the principle of equality between men and women. These sections read as follows:

"27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

"28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

11. There are also provisions of the Constitution Act, 1982 (of which the charter comprises Part I) which indicate Canada's respect for the integrity of its native peoples. Thus, s.25 of the charter reads as follows:

"25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

"(a) Any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763;

"(b) Any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claim settlement."

Part II of the Constitution Act, 1982 is entitled "Rights of the Aboriginal Peoples Of Canada", and is comprised by s.35, which reads as follows:

"35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

"(2) In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada."

And Part IV of the Act, entitled "Constitutional Conference", requires Canada to convene a constitutional conference on matters affecting native peoples. This conference was held on 15 and 16 March 1983. At this conference, the Minister of Indian and Northern Affairs confirmed his intention to move forward as quickly as possibly with the process to amend the Indian Act and eliminate offensive sections. Furthermore, a Constitutional Accord on Aboriginal Rights was signed by the federal and provinicial governments with the participation of aboriginal groups. In the Accord it was agreed to hold a further conference on aboriginal matters within the year. It was also agreed to take the necessary step to amend section 35 of the Constitution Act, 1982, set out above, so as to include the principle of equality between men and women in regard to aboriginal and treaty matters in the following terms:

35.(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

12. Article 2 (3)(a) of the Covenant requires that States parties ensure that there are effective. remedies for any persons whose rights or freedoms, as recognized in the Covenant, have been violated, notwithstanding that the violation has been committeed by persons acting in an official capacity. Sections 24(1) and 32(1) of the Canadian Charter of Rights and Freedoms bring Canada into compliance with this aspect of the Covenant. They read as follows:

"24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and Just in the circumstances.

"32.(1) This Charter applies

"(a) to the Parliament and Government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories;

"(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province."

13. Thus, the Constitutional Actf 1982 is a legal expression, in an effective manner, of the aims of Canada to end discrimination and to respect aboriginal rights and freedoms. These are the same aims expressed by the Minister of Indian Affairs and Northern Development in the passage quoted above in regard to the amendment of the Indian Act.

Conclusion

14. Canada has responded, in a constructive and responsible manner, to the views communicated to it by the Human Rights Committee in regard to communication to. R. 6/24. a/ It has taken substantial steps towards amending s.12(1)(b) of the Indian Act and, indeed, other sections of the Indian Act which may discriminate on the basis of sex or otherwise offend against human rights, and remains committed to the amendment of these sections in the near future.

15. Also, in April 1982, the Canadian Charter of Rights and Freedoms came into effect and it contains important guarantees of fundamental rights and freedoms in Canada. In particular, s.15, when it comes into effect in April 1985, will provide an effective remedy for anyone who alleges that his or her rights to equality before the law and the equal protection of the law have been violated by federal legislation, and other sections of the charter reflect Canada's respect for ethnic and aboriginal rights.

Notes

* The numbering system was changed at the eighteenth session of the Committee. Previously, the reference number of each case referred, in addition to the serial number of the case in the register, to the number of the list of communications in which it was summarized (e.g., R. 6/24) and not to the year of registration.

a/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex XVIII.

b/ The text of the enclosure is kept in the Secretariat files.