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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session (9–27 July 1990), the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the Covenant. The Special Rapporteurs for follow-up on Views prepared the present report in accordance with rule 106, paragraph 3, of the Committee's rules of procedure. In the light of the high number of Views on which follow-up is required and the limited resources that the secretariat can devote to follow-up on Views, it has not been possible to ensure systematic, timely and comprehensive follow-up on all cases, particularly given the applicable word limitations of the present report. The present report is based on the information available on the cases presented below, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. At the end of the 133rd session, in October 2021, the Committee concluded that there had been a violation of the Covenant in 1,292 (83.2 per cent) of the 1,552 Views that it had adopted since 1979.

3. At its 109th session (14 October–1 November 2013), the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations on State party reports.

4. At its 118th session (17 October–4 November 2016), the Committee decided to revise its assessment criteria.

Assessment criteria (as revised during the 118th session)

Assessment of replies:

A **Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B **Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.

C **Reply/action not satisfactory:** A response has been received, but the action taken or information provided by the State party is not relevant or does not implement the recommendation.

D **No cooperation with the Committee:** No follow-up report has been received after the reminder(s).

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

E Information or measures taken are contrary to or reflect rejection of the recommendation.

5. At its 121st session, on 9 November 2017, the Committee decided to revise its methodology and procedure for monitoring follow-up on its Views.

Decisions taken:

- Grading will no longer be applied in cases where the Views have been merely published and/or circulated.
- Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views.
- The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply by the State party and information provided by the author.

6. At its 127th session (14 October–8 November 2019), the Committee decided to adjust the methodology for preparing the reports on follow-up to Views and the status of cases by establishing a list of priorities based on objective criteria. Specifically, the Committee decided in principle to: (a) close cases in which it has determined that implementation has been satisfactory or partially satisfactory; (b) retain active those cases on which it needs to maintain dialogue; and (c) suspend cases for which no further information has been provided in the past five years either by the State party concerned or by the author(s) and/or counsel, moving them to a separate category of "cases without sufficient information on satisfactory implementation". The Committee is not expected to ensure any proactive follow-up on these cases that have been suspended for lack of information, unless one of the parties submits an update. Priority and focus will be given to recent cases and cases on which one or both parties are regularly providing the Committee with information.

B. Follow-up information received and processed up until December 2021

1. Canada

Communication No. 2020/2010, *McIvor and Grismer*

Views adopted:	1 November 2018
Violation:	Articles 3 and 26, read in conjunction with article 27
Remedy:	Effective remedy, including by: (a) ensuring that section 6 (1) (a) of the Indian Act of 1985, or of that Act as amended, is interpreted to allow registration by all persons, including the authors, who previously were not entitled to be registered under section 6 (1) (a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants born prior to 17 April 1985; (b) taking steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the Indian Act; and (c) taking all steps necessary to prevent similar violations in the future.
Subject matter:	Entitlement to Indian status as First Nations descendants on the maternal line (discrimination)
Previous follow-up information:	None
Submission from the State party:	17 January 2020[1]

[1] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 31 January 2020.

The State party affirms its commitment to its international human rights treaty obligations. It acknowledges and regrets the discriminatory treatment experienced by indigenous women and their descendants.

The State party informs the Committee that as of 15 August 2019, all provisions of Bill S-3, an Act to amend the Indian Act in response to the Superior Court of Quebec decision in *Descheneaux c. Canada*, are in force. Therefore, all sex-based inequities have been removed from the registration provisions of the Indian Act. Bill S-3 included provisions to: eliminate differential treatment between family members (cousins and their descendants), as a result of eligibility for registration based on their maternal versus paternal lines; eliminate the differential treatment between women and men (siblings) who were born out of wedlock to an Indian father before 1985, and of their descendants; eliminate the differential treatment of descendants of individuals, who as minors lost Indian status upon the marriage of their Indian mother to a non-Indian man, where the marriage occurred after the child's birth (thus equalizing them with persons whose Indian father married a non-Indian woman prior to 1985); ensure that the Indian Registrar provided flexibility to consider various forms of evidence with respect to eligibility for registration in cases of an unstated or unknown parent, grandparent or other ancestor.

Bill S-3 includes safeguards to hold the Government accountable to Parliament. The Minister of Indigenous Services will be required to review, prior to December 2020, the provisions of section 6 of the Indian Act to ensure that all sex-based inequalities have been eliminated, to review the operation of the new provisions and to report periodically to Parliament concerning said reviews.

The State party consulted with First Nations communities regarding the legislative amendments in Bill S-3. The consultation process took place between 12 June 2018 and 31 March 2019. The State party emphasizes its commitment to a nation-to-nation relationship with indigenous people as guided by the United Nations Declaration on the Rights of Indigenous Peoples.

The State party does not agree with the Committee's conclusion that any differential treatment within the registration provisions of the Indian Act at the time the Views were issued constituted violations of articles 3 and 26, read in conjunction with article 7, of the Covenant, as they relate to the authors' rights to the equal treatment of men and women. The State party affirms that the sex-based discrimination in the Indian Act, which personally affected the authors, was remedied with the passage of the Gender Equity in Indian Registration Act in 2011. The State party argues that, as persons eligible for registration under section 6 (1) (c) of the Indian Act, the authors were entitled to all the same rights and benefits, including the same ability to transmit Indian status to their descendants, as they would have been if they had been eligible for registration under section 6 (1) (a). Therefore, any violation of the authors' rights had been fully remedied in 2011 and their communication should have been declared inadmissible or without merit.

The State party informs the Committee that, on 15 August 2019, the Office of the Indian Registrar notified the authors with respect to their registration under the newly passed subsections. It notes also that the Committee's Views have been made publicly available, as they are posted on the website of the Department of Justice.

Submission from the authors' counsel: 30 March 2020[2]

Counsel submits that the provisions of Bill S-3 place Indian women, Indian men, matrilineal descendants and patrilineal descendants on an equal footing with respect to Indian registration eligibility, in compliance with the Committee's Views.

The authors have been notified by the State party regarding their registration for Indian status in accordance with the Views. In addition, certain First Nations women and their descendants in situations similar to that of the authors have also had their status upgraded automatically, as a result of the legislative amendments.

[2] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 20 May 2020.

Counsel submits that the violations of articles 3 and 26 of the Covenant, meant to be addressed by Bill S-3, are ongoing. The registration of newly eligible individuals is a serious and urgent issue as it relates to the State party's compliance with the Committee's Views.[3] The violations will cease only when benefits and status are granted to all individuals who are eligible to register. Ensuring that these rights are respected requires: (a) a proactive and effective information campaign that reaches First Nations communities, both on and off reservations, to advise First Nations women and their descendants of their eligibility and the registration process; and (b) a timely and effective registration process to allow them to enjoy the status that they have been discriminatorily denied.

Counsel acknowledges that the State party has posted information on its website regarding registration eligibility in light of the passage of Bill S-3. However, the State party has not organized a campaign to ensure that First Nations women and their descendants are informed about their rights concerning registration.

Counsel submits that the State party has not fulfilled its duty to publish and disseminate the Committee's Views. The Department of Justice website provides a link to the Committee's Views on the website of the Office of the United Nations High Commissioner for Human Rights without any commentary or explanation. The State party's obligation to publish and disseminate the Views means that it should ensure that there is a broad public understanding of the violations involved.

Counsel submits that the State party must provide sufficient resources to eliminate processing delays and to ensure that newly eligible individuals can enjoy their status. The registration process can take between six months and two years to complete. Many of those who are newly eligible have complex registration cases, for which processing delays of more than two years are common.

Despite the authors' requests, there has been no discussion of reparation, and the State party's submission makes no mention of its obligations to ensure full reparation or measures to ensure that future violations do not occur.[4] Furthermore, the State party's refusal to accept liability for the harm caused by the sex discrimination in the Indian Act is inconsistent with its obligation to provide an effective and enforceable remedy.

Submission from the State party: 11 June 2020[5]

The State party recalls that safeguards which will hold the Government accountable to Parliament are contained in section 12 of Bill S-3, which requires the Minister of Indigenous Services, within three years of the date of Royal Assent (prior to December 2020), to review the Indian Act and ensure that all sex-based inequities have been eliminated, and to report to Parliament on this review. In the event that the report identifies sex-based inequities with respect to the new provisions of section 6, the Minister must inform Parliament of the changes to the Indian Act that are recommended in order to reduce or eliminate those inequities.

The State party informs the Committee that the aforementioned report will be communicated to Parliament by 12 December 2020. Once the report is tabled in Parliament, the State party commits to provide it to the Committee.

Submission from the authors' counsel: 18 September 2020[6]

Counsel considers that the State party has not addressed the concerns raised in the authors' submission of 30 March 2020. Furthermore, the situation seems to have worsened

[3] Based on the State party's estimates, between 270,000 and 450,000 First Nations women and their descendants became newly eligible to register.

[4] The authors submit that appropriate reparations would include compensation for the harm done, a public apology, including acknowledgement of the facts and acceptance of responsibility, and the inclusion of an accurate account of the violations that occurred in the State party's law school education, in judicial training and in educational materials at all levels.

[5] The submission was acknowledged to the State party and transmitted to the authors' counsel for information on 27 November 2020.

[6] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 27 November 2020.

and the continuing non-implementation of the Committee's Views is having dire consequences, especially during the coronavirus disease (COVID-19) pandemic. Counsel emphasizes that delays in status registrations are ongoing and are not being addressed. Registration processes that should have been simplified and sped up have instead been slowed down.

Counsel recalls that registration is key for these individuals to receive uninsured health benefits and specific COVID-19 assistance from the federal Government. As this affects their ability to meet their basic needs during the pandemic, it constitutes a threat to the life and health, to public safety and to basic societal functioning. Counsel asks the Committee to request Canada to carry out the registration in a timely manner as an essential service.

Submission from the State party: 4 February 2021[7]

The State party informs the Committee that on 11 December 2020, the "Report to Parliament: review of Bill S-3" was tabled in Parliament (the House of Commons).

The report and the State party acknowledge that Bill S-3 has eliminated the sex-based inequities in the Indian Act registration provisions.

The State party recognizes that there are residual effects remaining from the previous sex-based laws and policies that continue to affect registration, including the "second-generation cut-off" and issues relating to the scrip system and enfranchisement. Registration and its link to "band" membership is also a concern for many individuals and First Nations. As a result, engagement with First Nations and stakeholders is ongoing to determine how best to address these concerns.

Furthermore, the State party acknowledges the reduction in activity due to the COVID-19 pandemic but submits that processing has now returned to pre-COVID levels. Consequently, the State party is working to address delays in registration decisions and to raise awareness among those who are newly entitled.

Specifically, the State party is making a number of processing and policy changes to enhance and modernize operations, such as a digital tool to move away from paper-based applications, investing $15.4 million to scale up processing, and investing an additional $5.8 million in engagement, outreach and the monitoring of impacts.

The State party reiterates the Government's commitment to a renewed, nation-to-nation relationship with indigenous peoples, based on a recognition of rights, respect and cooperation.

Submission from the authors' counsel: 15 June 2021[8]

Counsel submits that the State party has rejected the Committee's Views and failed to implement them. Counsel reiterates that the Covenant violations addressed by Bill S-3 did not cease with the coming into force of its amendment on 15 August 2019. Violations will only cease through registration and the consequent granting of benefits and status to all those who are now eligible. That depends on: (a) a proactive and effective information campaign that reaches First Nations communities; (b) a timely and effective registration process; and (c) assistance and transparency on the status request for the newly eligible. Counsel submits that, to date, these three conditions have not been met.

Counsel submits that the processing of applications should be recognized as an essential service that must be carried out in a timely manner, including in times of COVID-19. Many of the newly eligible applicants are ill and elderly and their applications should be processed expeditiously.

Counsel submits that there is extensive residual sex discrimination arising from the Indian Act that the State party must address. Without status registration, women and their descendants cannot be registered as band members and are excluded from accessing First

[7] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 16 February 2021.

[8] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 25 November 2021.

Nations-specific social programmes and services, such as health-care benefits. This contributes to high rates of poverty, illnesses and premature deaths. Counsel submits that newly registered individuals can still be excluded from band membership, if the band has adopted a membership code.[9] The State party must ensure that individuals newly registered under section 6 (1) (a) of the Indian Act are entitled to receive band membership.

Counsel reiterates that despite the authors' requests, there has been no discussion between the State party and the authors about full reparation, nor has reparation been mentioned in any public statement.[10]

Counsel submits that the State party's refusal to accept that the Indian Act caused sex discrimination and its attempt to bar affected individuals from seeking compensation is inconsistent with its obligation under the Covenant to provide an effective and enforceable remedy, and itself constitutes sex discrimination. The situation of women who lost their status due to involuntary enfranchisement was not specifically addressed by the amendment of section 6 (1) (a) of the Indian Act; such women continue to be relegated to lesser categories of status, with their descendants. Sex discrimination persists because of barriers to registration. Counsel submits that the State party failed to provide, discuss, and assume responsibility for making full reparation. Involuntarily enfranchised women continue to be denied section 6 (1) (a) status, and are barred from obtaining compensation in the courts.

Counsel submits that the Committee should require the State party to: (a) provide transparent information regarding the number of applications, their status, and the reasons for delays; (b) develop an effective information campaign, and provide legal assistance and genealogical information to the applicants; (c) reduce wait times; (d) address residual discrimination, by ensuring equal access to band membership, housing on reserves, services, and political participation, and ensuring that the women who were involuntarily transferred to their husband's bands can be restored to their birth bands; (e) design a process and identify appropriate measures that will make full reparation; (f) implement the Committee's Views; (g) eliminate barriers to obtaining an effective and enforceable remedy for harm caused to individuals by the violation of their Covenant rights, including section 10 (1) of the Indian Act, as amended by S.C. 2017 c. 25,[11] which bars them from claiming or receiving compensation; (g) ensure that section 6 (1) (a) includes Indian women and their descendants who were involuntarily enfranchised; (h) address the sex discrimination inherent in other provisions of the Indian Act; and (i) report back to the Committee regarding the above measures.

Committee's assessment:

(a) Inclusive interpretation of section 6 (1) (a) of the Indian Act of 1985, which allows registration by all persons, including the authors: B

(b) Taking steps to address residual discrimination within First Nations communities: B

(c) Non-repetition: B

Committee's decision: Follow-up dialogue ongoing.

2. Cameroon

Communication No. 2764/2016, *Zogo Andela*

Views adopted:	8 November 2017
Violation:	Articles 2 (3), 7, 9 (1), (3), (4) and (5), 11, 14 (1), (2), (3) (c) and (5), 15 (1), 16 and 26

[9] Pursuant to sect. 10 of the Indian Act, a band is permitted to assume control of its membership by adopting a membership code.

[10] See footnote 4 above.

[11] An Act to amend the Indian Act in response to the Superior Court of Quebec decision in *Descheneaux c. Canada*.

Remedy:	Effective remedy, including by: (a) immediately releasing Mr. Zogo Andela pending his trial; (b) bringing Mr. Zogo Andela to trial without delay; (c) providing Mr. Zogo Andela with appropriate compensation for the violations that he has suffered; and (d) taking all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Criminal proceedings for misappropriation of public funds; prolonged detention

Previous follow-up information: CCPR/C/125/3

Submissions from the State party: None

On 25 October 2018, the Special Rapporteur for follow-up to Views met with a representative of the Permanent Mission of Cameroon to the United Nations Office and other international organizations in Geneva to enquire about the author's health and the measures taken by the State party to implement the Committee's Views. The delegation informed the Special Rapporteur that the State party would respond by the deadline of 3 December 2018.

Despite three reminders being sent to the State party,[12] including one requesting the State party to comment on the author's submissions of 17 September 2018 and 21 September 2018 which are already included in the report examined by the Committee at its 125th session and are summarized below, no submission by the State party has been received to date.

Submission from the author's counsel and his son: 17 and 21 September 2018

Counsel and the author's son submitted that they had concerns about the health of the author, who was still in prison. At the time of the submission, the author had not been able to see a medical specialist, despite his repeated requests to the judicial and penitentiary authorities.

On 13 September 2018, the author had a serious nosebleed that required a thorough examination. On 14 September 2018, new correspondence was sent by counsel on this matter to the Minister of Justice, to no avail. On 29 October 2018, the author was summoned to appear before the Special Criminal Court.

Committee's assessment:

(a) Immediate release, pending trial: E

(b) Trial without delay: E

(c) Compensation: D

(d) Non-repetition: D

Committee's decision: Follow-up dialogue ongoing. The Committee will also continue the follow-up dialogue with the State party in the framework of the State party's periodic reporting to the Committee on the measures adopted to give effect to the rights recognized in the Covenant.

3. Colombia

Communications No. 2930/2017, *Pretelt de la Vega*, and No. 2931/2017, *Velásquez Echeverri*

Views adopted:	21 July 2020
Violation:	Article 14 (5)
Remedy:	(a) Provide adequate compensation; and (b) take all steps necessary to prevent similar violations from occurring in the future.

[12] The reminders were sent on 20 March 2019, 30 October 2020 and 26 November 2020.

Subject matter: Conviction of a former minister in sole instance by the highest judicial body (communication No. 2930/2017)

Conviction of the former Director of the Administrative Department of the Office of the President in sole instance by the highest judicial body (communication No. 2931/2017)

Previous follow-up information: None

Submissions from the State party: 3 May 2021[13]

The State party reports that the Committee's Views were published on the official websites of the Ministry for Foreign Affairs and the Office of the Presidential Adviser for Human Rights and International Affairs.

With regard to the provision of appropriate compensation to the authors, the State party reports that the Committee of Ministers established under "Law 288 on instruments for the compensation of victims of human rights violations by virtue of the Views of international treaty bodies" met on 5 March 2021. As a result of the deliberations of the Committee of Ministers, the State party published resolutions 1204 and 1203, dated 19 March 2021, in which it issued a negative opinion with regard to the application of Law 288 to the present Views by the Committee. The State party reports that it decided, therefore, not to proceed with providing compensation to the authors, who were informed of this decision on 6 March 2021.

Submission from the author's counsel: 4 November 2021[14] and 26 November 2021[15]

Counsel submits that the State party deliberately decided, without any justification, through its resolutions 1204 and 1203 of 19 March 2021, not to comply with the Committee's Views to provide the authors with the reparation and appropriate compensation they were entitled to.

Counsel also submits that the State party's resolutions 1204 and 1203 contain two grave irregularities, which revictimize the authors. Firstly, it considers the Committee's Views as "recommendations", which are not binding. Counsel submits that this opinion is contrary to the judgments of the State party's Constitutional Court, in which the Court has recognized the binding character of the Committee's Views, in its decisions SU-219 of 2019 and SU-146 of 2020. Counsel argues that the State party cannot ignore the binding character of the Committee's Views as an excuse for not complying with the Views in favour of the authors. Secondly, resolutions 1204 and 1203 do not provide any justification for the decision adopted by the State party's Committee of Ministers to issue a negative opinion with regard to the present Views adopted by the Committee. Counsel argues that this represents an additional violation of the authors' judicial guarantees and right to due process.

Counsel submits that the aforementioned considerations clearly indicate that the State party has no intention to give effect to the Views of the Committee. Counsel requests the Committee to declare the non-compliance by the State party with the Committee's Views.

Committee's assessment:

(a) Provide adequate compensation: E

(b) Non-repetition: C

Committee's decision: Follow-up dialogue ongoing. The Committee will request a meeting with a representative of the State party during one of its future sessions.

[13] The submission was acknowledged to the State party and transmitted to the authors for comments on 6 August 2021.

[14] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 12 November 2021.

[15] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 2 December 2021.

4. Lithuania

Communication No. 2719/2016, *Stasaitis*

Views adopted:	6 November 2019
Violation:	Articles 7 and 14 (2)
Remedy:	Effective remedy, including by: (a) providing adequate compensation; and (b) taking all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Alleged violation of rights in the course of criminal proceedings

Previous follow-up information: None

Submission from the State party: 7 May 2020[16]

The State party indicates that the Committee's Views were translated into the official language of the State party, and published on the official website of the Agent of the Government of Lithuania, and that a detailed explanatory note was distributed to all the relevant institutions.

Regarding legislative developments related to the grounds for the use of handcuffs in courtrooms, the State party submits that, following the amendment of the provisions of item 195 of the Rules of Convoy, systematic use of handcuffs is no longer allowed as of 8 January 2015. According to the new regulation, the police officers in charge of the convoy and, upon arrival at the court, the President of the Court Hearing, are in charge of deciding if the convoyed person should be handcuffed, on a case-by-case basis, taking into account mental condition, behaviour, and the safety of the environment. Moreover, the provisions of article 121 of the Code on Execution of Sentences, which established the grounds for the use of – inter alia – handcuffs in respect of arrested persons, detainees and convicted persons, were repealed on 1 September 2017.

The State party submits that metal cages are no longer used in courtrooms, following legislative changes[17] introduced shortly before the author's communication. Impact-resistant glass partitions may still be installed in the hearing rooms if a need arises for safety reasons.

The State party submits that its case law has been developed since the author's communication and thus should be considered as a sufficient general measure to give effect to the Committee's Views and to prevent similar violations in the future. Under this new case law,[18] the Lithuanian courts assessed whether the use of handcuffs in each case complied with the requirements of the Covenant, and examined whether in each situation the courts took necessary steps to establish when the use of handcuffs was justified.

The State party also submits that, in light of the amended legislation referred to above, the same principles established by the domestic courts would apply when assessing the compliance of the measures imposed with the presumption of innocence. The State party considers that the newly introduced legislation in conjunction with the case law developed by the national courts covers all the aspects that led to a violation of articles 7 and 14 (2) of the Covenant.

Regarding effective remedy, the State party notes that, according to domestic law, requests for compensation have to be submitted to the Ministry of Justice. However, the State

[16] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 20 May 2020.

[17] The State party refers to item 81 of the Model Description of the Main Requirements for Design and Installation for Court Buildings and Premises, approved by the Council of Judges in resolution No. 13P-16-(7.1.2) of 30 January 2015.

[18] The State party refers to multiple decisions, notably civil case No. 3K-3-493-421/2016, a decision of the Supreme Court of Lithuania of 2 December 2016, in which the plaintiff alleged that he had been held behind the partition and handcuffed in front of witnesses and other participants at the proceedings, in violation of art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

party submits that, to this day, the author has not submitted such a request. The author also had the possibility of asking for his proceedings to be reopened within six months of the adoption of the Committee's Views. The author did not make use of this opportunity.

In the light of the above, the State party considers that all the appropriate measures to give effect to the Committee's Views have been taken.

Submission from the author's counsel: 20 May 2020[19]

Counsel refers to media interviews with a representative of the State party, and to a decision of the Supreme Court, and submits that the State party is unwilling to acknowledge the binding nature of the Committee's Views and that it failed to act on them.[20] Counsel indicates that the State party's representative refused to talk to the author on the phone. Counsel submits that there is no chance for the author to seek reopening of his criminal case before domestic courts because the State party considers the Committee's Views as non-binding, and because the author does not have money for such proceedings. Counsel submits that the Committee should require that the State party reopen the case on its own initiative.

Counsel indicates that the photos of the author in handcuffs remain published on different websites and asks the Committee to request the State party to remove them, as they violate the principle of presumption of innocence under article 14 (2) of the Covenant.

Counsel submits that the State party should pay €15,000 to the author and €10,000 to counsel. Counsel states that public servants and judges should be educated on the binding nature of the Covenant, and that the actions that breached the Covenant in the present case should be investigated promptly, thoroughly and impartially, and the perpetrators should be held accountable for their acts.

Submission from the State party: 8 July 2020[21]

The State party reiterates that the author failed to ask for reopening of his criminal proceedings within the time limit prescribed by law. As regards compensation for damage, the State party submits that, under domestic law,[22] compensation in respect of non-pecuniary damage cannot exceed €1,500. If the author disagrees with this amount, he has the right to lodge a claim with the Ministry of Justice in accordance with the Code of Civil Procedure. To date, the author has not exercised this right.

Regarding the investigation and punishment of alleged perpetrators of breaches of the Covenant, the State party considers that no one could be held responsible or guilty for the violations suffered by the author, as they occurred mainly due to domestic regulations concerning the use of metal cages and the systematic use of handcuffs in courtrooms, which were legal at the time though the provisions permitting them were later repealed.

Regarding the presence of photos of the author in the press, the State party submits that, in accordance with the country's Law on the Provision of Information to the Public, the author has a right to ask the media to remove the photos.

Additional submission from the author's counsel: 25 April 2021[23]

In his submission, counsel reiterates his earlier assertion that the State party is unwilling to acknowledge the binding nature of the Committee's Views and to act on them. In support of this assertion, he refers to the arguments and claims made in his submission of 20 May 2020.

[19] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 February 2021.

[20] Counsel refers to a Supreme Court decision of 18 November 2019 ruling that the Covenant is not a part of Lithuanian criminal procedure law.

[21] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 23 February 2021.

[22] Art. 4 of the Law on Compensation for Damage Inflicted by Unlawful Actions of Interrogatory and Investigatory Bodies, the Prosecutor's Office and Courts.

[23] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 24 November 2021.

Committee's assessment:

(a) Provide adequate compensation: B

(b) Non-repetition: A

Committee's decision: Close the follow-up dialogue with a note of a partially satisfactory implementation of the Views.

5. Netherlands

Communication No. 2918/2016, *D.Z.*

Views adopted:	19 October 2020
Violation:	Article 24 read alone and in conjunction with article 2 (3)
Remedy:	Effective remedy, including: (a) providing adequate compensation; (b) reviewing the decision on the author's application to be registered as stateless and to be recognized as a citizen of the Netherlands; (c) reviewing the author's living circumstances and residence permit, taking into account the principle of the best interests of the child; and (d) non-repetition – including reviewing legislation (i) to ensure that a procedure for determining stateless status is established and (ii) on eligibility to apply for citizenship.
Subject matter:	Right to acquire nationality
Previous follow-up information:	None

Submission from the author's counsel: 5 July 2021[24]

Counsel submits that the author's legal status, residence and living conditions have remained unchanged since December 2020 and that the State party has not taken any steps to provide compensation or rectify the author's legal circumstances. The author continues to live in the family location facility in Katwijk, in difficult circumstances. The author has continued his education and will attend high school. The author and his family continue to pursue any legal or administrative efforts that might allow for a more legal status.

Counsel submits that on 21 December 2020, a revised bill to establish a statelessness status determination procedure and provide for an option for minors born stateless to acquire a nationality was communicated to Parliament. According to counsel, this bill falls short in several respects: Applicants found to be stateless as a result of the procedure would not acquire a permit to stay or a legal form of documentation of their status that would protect their rights and security, which would threaten their access to food, shelter and employment. No pathway to nationality of the Netherlands is envisioned or set out in the proposed law. The bill also maintains the requirement of "stable residence" for a period of 10 years in order for applicants to acquire nationality of the Netherlands by option. For residence to be considered "stable", a child and his or her parents must continuously and fully cooperate with the immigration authorities, including in the context of immigration proceedings. Counsel submits that this requirement is not only discriminatory but also hinges the child's rights on the actions of his or her parent(s), contrary to the Committee's Views and multiple international children's right obligations. The bill also does not directly tackle the issue of registration practice, leaving thousands of children and adults with "unknown" nationality during a protracted registration process.

Submission from the State party: 25 August 2021[25]

[24] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 December 2021.

[25] The submission was acknowledged to the State party and transmitted to the author's counsel for information on 23 December 2021.

The State party submits that after the adoption of the Committee's Views, the facts presented by the author, which formed the basis of the Views, were found to be inaccurate due to developments regarding the author's nationality status that took place while the Committee's consideration of the communication was pending. These developments have a retroactive effect on the facts of the author's case and the author has not informed the Committee about them.

According to the State party, on 2 November 2017 the author's mother obtained a Chinese passport from the Embassy of China. On 13 July 2018, the municipality of Katwijk changed the nationality on the author's mother's registration record to Chinese, since she had previously provided incorrect information about her identity and alleged statelessness. According to an email communication from the Embassy of China in The Hague to the Repatriation and Departure Service (of the Netherlands), the Chinese authorities were willing to issue a laissez-passer to the author's mother and her two children (including the author) on condition that the author's mother produced the birth certificates of both of her children and drew up a statement about the father of the children. On 6 July 2020, the municipality of Utrecht sent the municipality of Katwijk the author's corrected birth certificate. From that moment on, the author was registered with Chinese nationality in the Personal Records Database, with retroactive effect from the moment of his birth.

In light of the above-mentioned developments, the State party considers that there was no factual basis for the Committee's finding of a violation of article 24 read alone and in conjunction with article 2 (3) of the Covenant and does not consider it appropriate to take individual measures. Nevertheless, the State party will maintain the offer of compensation of €3,000 ex gratia, as recognition of the fact that the author has availed himself of his right to bring proceedings against the State party under the Optional Protocol to the Covenant and because the author has brought the more general issue of the lack of a procedure for determining statelessness to the attention of the Committee.

The State party acknowledges that the lack of a procedure for determining statelessness means that there is a gap in the country's legislation, and refers to the bill that was submitted to the House of Representatives on 21 December 2020.[26] The bill allows stateless individuals to have their statelessness determined in a specialized procedure and to gain entitlement to their special rights as stateless persons. This includes the right to an accelerated procedure for acquiring nationality of the Netherlands for stateless individuals who were born in and are lawfully resident in the Netherlands, and the right to acquire nationality of the Netherlands for minors who were born in the Netherlands, have been stateless since birth and for whom the Netherlands has been their principal country of residence for at least 10 years, regardless of the lawfulness of their residence. The State party underlines that the bill is in accordance with the provisions of the Convention relating to the Status of Stateless Persons, of 1954, and of the Convention on the Reduction of Statelessness, of 1961, and considers that it addresses the issue that the author has brought to the attention of the Committee.

The State party submits that it has shared the Views with the relevant authorities and will include a summary of the Views in an annual report to Parliament.

Submission from the author's counsel: 15 December 2021[27]

Counsel reiterates that the author's legal and bureaucratic situation has remained unchanged and that the State party has not taken any steps to provide compensation or rectify the author's legal circumstances.

Counsel notes, in its submission, that the State party has reinterpreted the remedial measures prescribed in the Views and asserts that the mere recording of a foreign nationality by authorities in the Netherlands resolves the author's uncertain legal status. Counsel also notes that the State party considers that the financial compensation is an act of grace rather

[26] On 26 May 2021, the House of Representative presented its report, which is currently being considered by the Government. The proposed bill is available at https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z25633&dossier=35687.

[27] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 December 2021.

than an obligation, and that it considers itself discharged of its obligation to address the author's current living situation.

Counsel submits that the author and his family now live with the partner of the author's mother. The family is not officially registered, as they have not received a residence permit or citizenship. The author's mother applied for a "living with partner" residence permit. That request was rejected. The living conditions of the author are still precarious; he still does not have any access or rights to social benefits and his mother is not allowed to work. The COVID-19 situation has been particularly challenging, as it is difficult to obtain a QR code to enter shops, cultural and sporting events and public buildings, for undocumented individuals.

Counsel submits that the State party cannot unilaterally modify the Committee's recommendations based on its own reading of "new factual circumstances", especially when it did not make this argument before the adoption of the decision, thus precluding the author from responding. Even assuming that the Committee were to find that new factual circumstances amounted to a material change, the Committee would still have to balance those circumstances against the best interests of the child, including the length of time that the author had been in limbo, his prolonged settlement and acculturation in the Netherlands, and the fact that his rights to a nationality and to secure legal status cannot be waived by the actions of his parent.

Counsel considers that the State party's position of determining Chinese nationality law and retroactively applying its purported effects upon the author is contrary to guidelines of the United Nations High Commissioner for Refugees.[28]

Counsel reiterates that the bill fails to provide a remedy that would prevent future violations of the rights of children in a similar situation, and would likely complicate the author's legal situation. Counsel submits that the bill is still pending the Government's approval. Counsel submits that as the bill maintains the requirement of "stable residence" in order for applicants to acquire nationality of the Netherlands by option, it is contrary to article 1 of the Convention on the Reduction of Statelessness, of 1961. The minimum term set in the bill (10 years of residence) is contrary to the Committee's Views and to Office of the United Nations High Commissioner for Refugees Guidelines on Statelessness No. 4. Counsel submits that the State party has not taken any affirmative steps to adjust administrative practices, amend the relevant laws or institute a statelessness recognition procedure that is in line with the statelessness conventions.

Counsel submits that the State party has not publicly disseminated the findings and conclusions of the case. Although it has shared the Views with the relevant authorities, it has failed to provide sufficient information concerning follow-up.

Submission from the State party: 27 January 2022[29]

The State party submits that it informed the Committee in its follow-up observations of 25 August 2021 that the author had been registered with Chinese nationality. The State party clarifies that its conclusion that the author has Chinese nationality was based on the fact that the author's mother had submitted a copy of her Chinese passport to the municipality of Katwijk and the Immigration and Naturalization Service, and on the subsequent correction made on the author's birth certificate. The State party also refers to the information in the most recent country report of the Ministry of Foreign Affairs, dated 27 July 2020, according to which it is stated in the Nationality Law of China that a child holds Chinese nationality if

[28] Office of the United Nations High Commissioner for Refugees, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5–9 of the 1961 Convention on the Reduction of Statelessness, May 2020, available at https://www.refworld.org/docid/5ec5640c4.html. Paragraph 81 reads: "The question relevant to whether an individual will be rendered stateless through withdrawal of nationality is whether the individual currently possesses and has proof of another nationality. This assessment should not be made on the basis of one State's interpretation of another State's nationality law but rather should be informed by consultations with and written confirmation from the State in question."

[29] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 28 January 2022.

born abroad and one of the parents holds Chinese nationality. The State party also submits that in an application form for a regular residence permit under the "Regulation for long-term resident children", submitted by the author in person on 2 March 2019, it was stated that he and his younger sister possessed Chinese nationality.

With regard to the provision of adequate compensation to the author, the State party reiterates the information provided in its follow-up observations of 25 August 2021, indicating that it paid to the author, on 23 December 2021, the amount of €3,000 ex gratia, as recognition of the fact that the author had availed himself of his right to bring proceedings against the State party under the Optional Protocol to the Covenant and since the author had brought the more general issue of the lack of a procedure for determining statelessness to the attention of the Committee.

The State party reiterates that a bill introducing a special procedure for having statelessness determined by a civil court was submitted to the House of Representatives on 21 December 2020. The House of Representatives presented its report, containing questions and observations by its members, to the Government on 26 May 2021, which then provided responses and observations to the House of Representatives on 17 December 2021. The State party informs the Committee that this bill is expected to be scheduled for a plenary session during the coming months. This is also the case regarding a second bill, which introduces a new right to acquire nationality of the Netherlands for minors born in the Netherlands who have been stateless since birth and for whom the Netherlands has been the principal country of residence for at least 10 years.[30] The State party submits that the newly formed Government has explicitly mentioned its support for these bills in the coalition agreement for the coming years.

Submission from the author's counsel: 7 March 2022[31]

Counsel submits that the State party has not yet implemented the Committee's Views in the present communication and that the bills mentioned in State party's follow-up submission of 27 January 2022 have not yet been adopted. Counsel recalls that the Government has been promising to have such bills enacted over last eight years, but the situation on the ground and in practice remains unchanged and there is still no statelessness recognition procedure.

Counsel also submits that the State party has not responded to the substantive concerns and critiques voiced by the author concerning the content of the proposed bills and their non-conformity with the Committee's Views and the provisions of the Convention relating to the Status of Stateless Persons, of 1954, and the Convention on the Reduction of Statelessness, of 1961. Therefore, the proposed bills will not address the violations of the author's rights and those of other stateless children in the Netherlands.

In light of the foregoing, counsel urges the Committee to impress upon the State party the inadequacy of the measures taken to date to provide reparation for the violation of the Covenant rights.

Committee's assessment:

(a) Provide adequate compensation: C

(b) Review the author's application to be registered as stateless: N/A[32]

(c) Review the author's application to be recognized as a citizen of the Netherlands: E

[30] The State party corrects the information contained in its follow-up observations of 25 August 2021, which erroneously stated that one bill was expected to cover both a procedure for having statelessness determined by a civil court and a new right to acquire nationality of the Netherlands for stateless minors.

[31] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 18 March 2022.

[32] The issue became moot, in light of the information received by the Committee from the State party on 25 August 2021, that is, after the adoption of the Views in the present communication.

(d) Review the author's living circumstances and residence permit, taking into account the principle of the best interests of the child: E

(e) Non-repetition, including reviewing legislation (i) to ensure that a procedure for determining stateless status is established and (ii) on eligibility to apply for citizenship: C

Committee's decision: Follow-up dialogue ongoing.

6. Russian Federation

Communication No. 2446/2014, *Vovchenko*

Views adopted:	24 October 2019
Violation:	Article 9 (1)
Remedy:	The State party is obligated to take appropriate steps to provide compensation to the author for his arbitrary detention. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Arrest without record; handcuffing; failure to provide adequate medical care in detention

Previous follow-up information: None

Submission from the State party: 2 August 2021[33]

The State party submits that, in order to prevent similar violations from occurring in the future, the Committee's Views in the present communication were brought to the attention of specialized prosecutors' offices by the General Prosecutor's Office of the Russian Federation. In addition, separate instructions were given with regard to the need to comply with the provisions of criminal procedure law, including those establishing procedural formalities regarding detention.

As regards the provision of compensation to the author, the State party submits that, according to information from the Supreme Court of the Russian Federation, the author did not petition the State party's courts in connection with the adoption by the Committee of the Views in the present communication.

Submission from the author: 20 December 2021[34]

In his comments on the State party's follow-up observations, the author refers to the ruling of the Presidium of the Supreme Court of the Russian Federation of 22 November 2017[35] and submits that, according to that ruling, his apprehension on 10 April 2013 and the subsequent decisions of the Central District Court in Volgograd to order his pretrial detention were found to be unlawful in the light of new facts and were annulled.[36] Consequently, his pretrial detention in SIZO No. 1 in Volgograd from 24 May 2013 to 18 December 2013 was also unlawful. The author submits that, despite the aforementioned ruling of the Presidium of the Supreme Court, he was not provided with any rehabilitation measures or compensation.

The author further submits that the State party's authorities did not take any steps to provide him with compensation for the violation of his rights under article 9 (1) of the

[33] The submission was acknowledged to the State party and transmitted to the author for comments on 25 August 2021.

[34] The submission was acknowledged to the author and transmitted to the State party for information on 24 January 2022.

[35] According to the text of the ruling of the Presidium of the Supreme Court, the review procedure was initiated by the Chair of the Supreme Court in the light of new facts. Specifically, on 16 February 2017, the European Court of Human Rights found a violation by the State party's courts of the author's rights under article 5 (3) of the European Convention on Human Rights, when extending the duration of his pretrial detention.

[36] The ruling of the Presidium of the Supreme Court in question only deals with the decisions of the Central District Court in Volgograd and the Volgograd Regional Court concerning the extension of the duration for the author's pretrial detention from 24 May 2013 to 18 December 2013.

Covenant, which was established by the Committee in the present communication. As to the State party's argument that he did not petition the State party's courts in connection with the adoption of the Committee's Views, the author submits that the State party's authorities have the power to determine on their own motion the amount of compensation due to the author and to contact him with their proposal, rather than to compel him to go through another round of legal proceedings. The author also mentions that, in determining the amount of compensation, the State party's authorities should take into account the fact that, despite his poor state of health, the author provides for his elderly parents and minor child.

Committee's assessment:

(a) Providing compensation to the author for his arbitrary detention: C

(b) Non-repetition: C

Committee's decision: Follow-up dialogue ongoing. The Committee will also continue the follow-up dialogue with the State party in the framework of the State party's periodic reporting to the Committee on the measures adopted to give effect to the rights recognized in the Covenant.

7. Tajikistan

Communication No. 2173/2012, *Boboev*

Views adopted:	19 July 2017
Violation:	Articles 6 (1) and 7, read alone and in conjunction with article 2 (3), with regard to Ismonboy Boboev; and article 7, read alone and in conjunction with article 2 (3), with regard to Dzhuraboy Boboev
Remedy:	Effective remedy, including by: (a) conducting a prompt and impartial investigation into the torture and death of Ismonboy Boboev, and prosecuting and punishing those responsible; (b) keeping the author informed at all times about the progress of the investigation; (c) providing the author with compensation for the loss of his son's life, for the torture that his son suffered, and for the pain and anguish that he himself suffered as a result of his son's death; and (d) taking all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Torture and death of the author's son in police custody

Previous follow-up information: None

Submission from the State party: 16 April 2018[37]

In its follow-up submission, the State party largely recalls the information contained in the Committee's Views, including the circumstances of Ismonboy Boboev's death, as well as information relating to the identification and prosecution of those responsible.

The State party submits that under article 42 of the Criminal Procedure Code of Tajikistan, a victim in a criminal case and his or her representatives cannot have access to the criminal investigation case file while the investigation is still ongoing. As confirmed by the Constitutional Court of Tajikistan, access to the case file can only be granted once the investigation is completed. However, Ismonboy Boboev's counsel and representatives were partially acquainted with the materials of the criminal investigation case file, including the results of the forensic medical examination of 2 March 2010. The State party adds that Ismonboy Boboev's relatives were also given access to the evidence at all stages of the investigation, including a video of his body before the burial, which subsequently prompted his relatives to request another forensic medical examination. The results of this additional

[37] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 17 July 2019.

examination were also shared with Ismonboy Boboev's relatives. Moreover, all arguments contained in the complaints and requests submitted by Ismonboy Boboev's representatives are being carefully examined, and indeed the complaints and requests submitted by his relatives in the past to different government agencies were also carefully considered and appropriate responses were provided to them.

The State party further submits that its compliance with the obligations under articles 6 (1) and 7 of the Covenant could be evaluated by the Committee only after a final criminal judgment in Ismonboy Boboev's case had been rendered and those found to be responsible had been prosecuted.

The State party adds that, on 30 May 2015, a pretrial criminal investigation into the circumstances of Ismonboy Boboev's death was suspended, due to failure to identify those responsible.

The State party further submits that, on an unspecified date, the Public Prosecutor's Office of Tajikistan reopened the pretrial proceedings and the criminal case was submitted to the Investigation Department of the Ministry of Internal Affairs for further investigative actions, during which all the claims and arguments submitted to the Committee by Ismonboy Boboev's father would be carefully examined.[38]

Submissions from the author's counsel: 2 September 2019[39] and 19 January 2022[40]

In his comments of 2 September 2019 on the State party's submission, counsel states that the State party merely repeated the information that it had already previously submitted to the Committee.

Counsel submits that Dzhuraboy Boboev, the author of the present communication and Ismonboy Boboev's father, passed away on 31 December 2017. Ismonboy Boboev's other relatives refused, apparently because of fear of reprisals, to continue the follow-up proceedings before the Committee and to engage with the State party's authorities with regard to reopening the investigation into the circumstances of Ismonboy Boboev's death.

Counsel also submits that the author and his counsel did not receive any information on the implementation of the Committee's Views within 180 days, the time frame that was given to the State party to inform the Committee of all measures undertaken to give effect to the Views. For this reason, on 2 January 2018, counsel, as well as a non-governmental organization called the Independent Centre for Human Rights Protection, lodged a complaint with the Executive Office of the President of Tajikistan and the Public Prosecutor's Office of Tajikistan. On 2 February 2018, the Public Prosecutor's Office of Tajikistan decided to reopen the suspended pretrial criminal investigation into the death of Ismonboy Boboev and to transmit the criminal case to the Investigation Department of the Ministry of Internal Affairs, for further investigation.

Counsel further submits that, according to article 161 (3) of the Criminal Procedure Code, the transmission of cases from the Public Prosecutor's Office of Tajikistan to the Ministry of Internal Affairs violates the principle of investigative jurisdiction, since the suspects in the case of Ismonboy Boboev's case are officers of the Ministry of Internal Affairs. The request by the author's counsel and the Independent Centre for Human Rights Protection to remove the case from the Investigation Department of the Ministry of Internal Affairs was, however, rejected, on 6 February 2018. On 14 February 2018, counsel and the Independent Centre for Human Rights Protection lodged a complaint with the Public Prosecutor's Office regarding violation of the principle of investigative jurisdiction. On 14 March 2018, the Public Prosecutor's Office rejected that complaint as unfounded. On 17 May 2018, counsel and the Independent Centre for Human Rights Protection submitted an appeal against the decision of the Public Prosecutor's Office of 2 February 2018 to Sino District Court in Dushanbe. That appeal was rejected on 28 June 2018. On 5 July 2018, the author's counsel

[38] The State party does not provide any further information on these pretrial proceedings.

[39] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 November 2021.

[40] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 7 February 2022.

and the Independent Centre for Human Rights Protection lodged a cassation appeal against the Sino District Court decision to the Cassation Chamber on Criminal Cases of Dushanbe City Court. On 31 July 2018, Dushanbe City Court upheld the decision of Sino District Court of 28 June 2018.

Counsel also submits that, on 16 October 2018, the Ministry of Internal Affairs informed interested parties that the pretrial criminal investigation into the death of Ismonboy Boboev had been suspended, due to the completion of all investigative actions and the unspecified illness of two suspects.

In the light of the foregoing, counsel maintains the arguments and claims submitted by the author in his communication to the Committee. Therefore, counsel requests that the Committee consider the State party's response as unsatisfactory.

In his additional submission of 19 January 2022, counsel states that no further actions concerning this communication were taken by him or the Independent Centre for Human Rights Protection, for lack of legal authority, since the power of attorney issued by Dzhuraboy Boboev on 9 October 2017 became null and void after his death. Counsel concludes, therefore, that the State party's authorities have failed to take measures to give effect to the Views in the present communication.

Committee's assessment:

(a) Conducting an investigation, and prosecuting and punishing the perpetrators: C

(b) Keeping the author informed at all times about the progress of the investigation: C

(c) Providing the author with compensation: C

(d) Non-repetition: D

Committee's decision: Close the case, with a note of unsatisfactory implementation of the Committee's Views.