



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
11 March 2022

Original: English

Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 68/2014***

<i>Communication submitted by:</i>	Jeremy Eugene Matson (not represented by counsel)
<i>Alleged victims:</i>	The author and his children, I.D.M. and A.M.M.
<i>State party:</i>	Canada
<i>Date of communication:</i>	18 October 2013 (initial submission)
<i>References:</i>	Transmitted to the State party on 4 July 2014 (not issued in document form)
<i>Date of adoption of views:</i>	14 February 2022
<i>Subject matter:</i>	Entitlement to Indian status as First Nations descendants in the maternal line (discrimination)

* Adopted by the Committee at its eighty-first session (7–25 February 2022).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Nicole Ameline, Leticia Bonifaz Alfonzo, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Franceline Toé-Bouda.



1 The author of the communication is Jeremy Eugene Matson,¹ a national of Canada born on 1 April 1977. He is a member of the indigenous Squamish Nation. He submits the communication on his own behalf and on behalf of his daughter, I.D.M., born on 29 May 2008, and his son, A.M.M., born on 31 August 2011. He claims that the State party has violated their rights under articles 1, 2 and 3 of the Convention. He is not represented by counsel. The Optional Protocol entered into force for Canada on 18 January 2003.

Facts as submitted by the author

Determination by the State party as to who qualifies as indigenous

2.1 The author submits that, since the adoption of the Indian Act of 1876, with its provisions on registration as an “Indian”, the State party has discriminated against indigenous women and their descendants, denying them indigenous status, the right to determine their indigenous identity and their fundamental right to belong to a group of indigenous people.

2.2 The Indian Act is the legislative regime that has been imposed on First Nations to regulate their relationship with the Government. Under the Act, the federal Government maintains a status list (Indian Register) of persons identified as a “status Indian”. That status is a condition for gaining access to rights and benefits, such as health-care services, financial support for education, the right to reside on indigenous territories and the rights to hunt and fish on indigenous traditional lands. Most significantly, such status confers the ability to transmit it to one’s children, as well as a sense of acceptance within indigenous communities.

2.3 Prior to 1985, the Indian Act contained provisions that were explicitly discriminatory against indigenous women, taking away their status if they married non-status men and making the transmission of status to descendants dependent on the male line.

2.4 In 1981, in response to a complaint brought by Sandra Lovelace, a Mi’kmaq woman, the Human Rights Committee found that the provisions of the Indian Act were discriminatory.² The Committee’s views led to the Act being amended with the intention of restoring Indian status to women who had been disenfranchised for marrying non-indigenous men. Those amendments, known as Bill C-31 of 1985, failed to remedy fully the legacy of discrimination and in fact perpetuated further discrimination against the descendants of women who had lost their status. Bill C-31 created section 6 of the Indian Act, an entitlement and registration scheme comprising two main categories: section 6 (1), for individuals with two parents with status, whose children would have status regardless of whom they partnered with; and section 6 (2), for individuals with only one parent with status, whose children would be eligible for status only if the other parent of their children also had status. That rule, known as the “second generation cut-off”, was applied to all children born after 1985 and retroactively to all children of people regaining status. As a consequence, the grandchildren of women who had been disenfranchised could have status only if both of their parents had status. Although women would no longer lose their status because of whom they married, the new provisions created an unequal ability to pass status on to descendants. Under the new rules, children with only one status parent had a different form of status from that of children with two status parents. As a result of that unilateral determination by the State party as to who was a status Indian, thousands of indigenous women and their children were excluded from registration

¹ The grandson of Nora Johnson, an indigenous woman from the Capilano Community, Squamish Nation.

² Human Rights Committee, *Lovelace v. Canada*, communication No. 24/1977, views of 30 July 1981.

and denied their right to determine their own identity. The law was discriminatory against women, because the same rules did not apply to indigenous men.

2.5 In 1989, Sharon McIvor, an indigenous woman, launched a legal challenge to the discriminatory provisions under the amended Indian Act. As a result of the amendments of 1985, she and her son had become eligible for status; however her son's children were not entitled to registration, because their mother was not indigenous. Ms. McIvor submitted that persons whose grandfathers had been indigenous, rather than their grandmothers, were entitled to registration. Almost 20 years later, the Supreme Court of British Columbia ruled that the amendments of 1985 continued to perpetuate the historical disadvantage experienced by indigenous women and those who traced their status through the maternal line. The federal Government appealed; the British Columbia Court of Appeal found that the amendments of 1985 had infringed upon equality rights, because they had merely postponed the second generation cut-off by one generation. As a result, amendments to the Act were adopted under Bill C-3 of 2011, according to which all grandchildren of women who had lost status by marrying someone without status regained their eligibility for status, provided that they were born after 1951.³ However, Bill C-3 gave them only the limited form of status that made their ability to pass on status to their own children dependent on the status of the other parent. That restriction did not apply to status Indians of parallel generations who, because they traced their descent from the male line, were not affected by the disenfranchisements of the past. The reforms were carried out without adequate consultation with indigenous peoples, and the views of indigenous peoples' organizations and leading advocates for indigenous women's rights, who had called for a process of broader reform to eliminate all forms of discrimination, were ignored.

Implication of the legislation for the lives of the author and his children

2.6 The author resides in Kelowna, British Columbia, outside of his traditional First Nation territory. He is from a long line of leaders of the Capilano Community, part of the Squamish Nation. The author's paternal grandmother was Nora Johnson, born in 1907, an indigenous woman and the daughter of two indigenous parents from the Squamish Nation. When Ms. Johnson was a child, the State party forcibly took her away from her family and placed her in a residential school. In 1927, she married a non-indigenous man. As a consequence, she ceased to be considered by the State party as indigenous. Her son (the author's father) married a non-indigenous woman in 1976; the author was born in 1977, and he was not entitled to registration as a status Indian.

2.7 As a result of the amendments of 1985, the author's paternal grandmother was entitled to registration as a status Indian under paragraph 6 (1) (c) of the Indian Act, but, because she had married a non-indigenous man, she was able to pass status on to her son (the author's father) under section 6 (2) only. The author's parents (a section 6 (2) status Indian father and a non-indigenous mother) applied for registration on the author's behalf, but it was denied because of the second generation cut-off rule.

2.8 As a consequence of the amendments of 2011, the author's father was deemed to have been entitled to registration under section 6 (1) of the Indian Act, and, as a result, the author became eligible to entitlement and registration for the first time. He applied for status for himself and his children, who were born to a non-indigenous woman. The Indian Registrar registered the author under section 6 (2), the more restrictive form of status, and denied the registration of his children. By comparison, descendants of status Indian grandfathers would never have lost their status and would therefore have been able to pass on their status to their children.

³ Cut-off date based on the date on which a previous version of the Indian Act had come into force.

Access to justice

2.9 In 2008, the author filed a discrimination complaint under the Canadian Human Rights Act. The Canadian Human Rights Commission found that the complaint had merit and forwarded it to the Canadian Human Rights Tribunal for a hearing. However, in 2012, the Federal Court of Appeal ruled, in *Public Service Alliance of Canada v. Canada Revenue Agency*, that the Tribunal did not have jurisdiction to consider complaints of discrimination concerning an act of Parliament. The Commission filed an appeal to the Supreme Court of Canada, which was denied. As a consequence, on 24 May 2013, the Tribunal, concluding that the complaint essentially sought to challenge legislation, rather than a discriminatory practice, ruled that it could not hear the author's complaint concerning the provisions of the Indian Act.

Complaint

3.1 The author submits that all domestic remedies have been exhausted. The Canadian Human Rights Tribunal denied his complaint and, in *Public Service Alliance of Canada v. Canada Revenue Agency*, the Supreme Court ruled that the Indian Act cannot be challenged under the Canadian Human Rights Act. There is therefore no effective domestic remedy available in the State party to challenge historical and ongoing discrimination on the basis of matrilineal descent.

3.2 The Indian Act does not allow for the author to pass on his status to and determine the cultural identity of his children. Indeed, because the author is of matrilineal, and not patrilineal, indigenous descent, he has been denied his status and his full identity as indigenous; the fact that his children continue to be denied status and their right to determine their own identity as indigenous has an impact on their cultural acceptance within the Squamish Nation. As a consequence, the Indian Act constitutes a violation of the fundamental right of the author and his children to belong to an indigenous community or nation, in accordance with its traditions and customs.

3.3 The author submits that the case concerns: (a) long-standing and ongoing legislative gender-based discrimination against indigenous women and their descendants, which results in the cultural assimilation of indigenous peoples by denying their fundamental right to determine their own identity; (b) the lack of adequate consultation with indigenous peoples when amending the legislation affecting them; and (c) a violation of the right to access remedies. The author therefore claims violations of his and his children's rights under articles 1, 2 and 3 of the Convention.

3.4 The author requests that the Committee recommend that the State party provide equal registration to all indigenous persons of matrilineal descent.

State party's observations on admissibility and the merits

4.1 On 8 January 2015, the State party submitted its observations on admissibility and the merits. It submits that the communication should be found inadmissible under article 2 of the Optional Protocol, because, as a man, the author cannot claim to be a victim of violations under the Convention.

4.2 In addition, the State party maintains that the distinction alleged by the author is made not on the basis of gender, but rather on lineage, which is not grounds of discrimination under the Convention. The communication should therefore be found inadmissible under article 4 (2) (b) of the Optional Protocol.

4.3 The State party submits that the communication is also inadmissible owing to the non-exhaustion of domestic remedies, given that the author's complaint lodged

under the Canadian Human Rights Act is still pending; the Commission has applied for a review of the decision of the Canadian Human Rights Tribunal before the Federal Court. The State party further submits that the author has failed to bring a constitutional claim of discrimination under the Canadian Charter of Rights and Freedoms.

4.4 Furthermore, the State party submits that the communication is inadmissible because the fact on which the alleged discrimination is based, the author's grandmother's loss of entitlement upon marriage in 1927, occurred prior to the entry into force of the Optional Protocol.

4.5 On the merits, the State party submits that, as a definitional provision, article 1 of the Convention cannot be violated in and of itself. According to the State party, the communication, at its core, concerns the criteria for determining who is eligible to be registered as an Indian. The State party indicates that it establishes who is an "Indian" to ensure that those who are eligible for Indian status have a sufficient degree of descent from, i.e. are sufficiently connected to, the historical First Nations peoples. The State party clarifies that there is no human right to be registered as an Indian and that the registration provisions under the Indian Act are no longer based on gender, but on birth and marriage dates.

4.6 The State party claims that it has fully met its obligations under articles 2 and 3 of the Convention. While recognizing that the Indian Act had traditionally discriminated against women, the State party submits that eliminating discrimination on the basis of gender had been a primary goal in the amendments of 1985.

4.7 The State party submits that the amendments of 2011 addressed the eligibility for status of the grandchildren of women who had lost their status prior to 1985 upon marrying a non-indigenous person, and that it is precisely owing to that legislation that the author is entitled to registration as an Indian. The State party concludes that the only present-day distinction is the circumstance of differing entitlements to registration as an Indian for the great-grandchildren of indigenous women who married non-indigenous men, as opposed to the great-grandchildren of indigenous men who married non-indigenous women, where there was so-called "parenting out" prior to 1985. The State party specifies that the amendments of 2011 left in place a cut-off for parenting out, passing it to the next generation. The author is now eligible for status, but only under section 6 (2) of the Indian Act; the author's children, as the great-grandchildren of an indigenous woman, may not be eligible. The State party recognizes that, on the contrary, the grandchildren of indigenous men who married non-indigenous women prior to 1985 have status under section 6 (1), rather than section 6 (2), and that therefore the great-grandchild of an indigenous man are also eligible to be registered.

4.8 The State party submits that it does not believe that the level of consultations with indigenous peoples is relevant to the question of whether the registration provisions are discriminatory against women.

Additional submission from the author

5.1 On 15 January 2015, the author submitted reports of the Inter-American Commission on Human Rights⁴ and the Special Rapporteur on the rights of indigenous peoples,⁵ as support for his assertion that the violations that he is claiming are ongoing violations.

⁴ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada* (2014). Available at www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

⁵ A/HRC/27/52/Add.2.

5.2 According to the Inter-American Commission on Human Rights, the Indian Act affected women's right to be free from discrimination. Although the amendments of 1985 addressed some of the discriminatory provisions, in that women who had lost status by marrying non-indigenous men were able to regain status for themselves and for their children, their grandchildren did not regain their right to status. Because of the discriminatory allocation of status in the past, the descendants of an indigenous woman who married a non-indigenous man were subject to the second generation cut-off, at which point status could no longer be transmitted. With the amendments of 2011, there remained some provisions that had a discriminatory effect for indigenous women, and such status classification could rise to the level of cultural and spiritual violence against indigenous women, given that it created a perception that certain subsets of indigenous women were less purely indigenous than those with "full status".⁶

5.3 In paragraph 55 of his report, the Special Rapporteur on the rights of indigenous peoples stated that the amendments of 2011 did not address all sex-based discrimination stemming from the Indian Act, as acknowledged by the Standing Senate Committee on Human Rights, and that some classes of people continued to be excluded from status on the basis of the historical discrimination against matrilineal descendants.

Author's comments on the State party's observations on admissibility and the merits

6.1 On 8 February 2015, the author submitted comments on the State party's observations on admissibility and the merits. He notes that nowhere in article 2 of the Optional Protocol is it stated that an individual must be female in order to submit a communication when claiming to be a victim of gender-based discrimination. The author recalls that he and his children are victims, as descendants of an indigenous woman, of the violations perpetrated by the State party against indigenous women and their descendants.

6.2 The author further submits that the discrimination is ongoing, given that it was perpetuated by the amendments of 2011, which, as acknowledged in the State party's submission, differentiate between matrilineal and patrilineal descendants. The author recalls that the Committee has expressed its concern about the fact that the Indian Act continued to contain discriminatory provisions and recommended that the State party eliminate the continuing discrimination with respect to the transmission of Indian status.⁷

6.3 On the supposed necessity for the author to bring a case before the Supreme Court of British Columbia, the author recalls that the Human Rights Committee, in its decision of admissibility in *Lovelace v. Canada*,⁸ noted that the Optional Protocol did not impose on the alleged victim the obligation to have recourse to the national courts, if the highest court of the State party concerned had already substantially decided the question at issue. The author notes that it took Ms. McIvor 26 years to receive a partial remedy. The author therefore alleges that a remedy under the Canadian Charter of Rights and Freedoms is an unreasonable and illusory option, because it takes many years and is very expensive and as such would not be financially feasible for him. He has a very low annual income and is a beneficiary of a Canadian disability pension plan.

6.4 On the merits, the author recalls that the Standing Senate Committee on Human Rights noted in its report on the amendments of 2011 that it did not deal with all sex-

⁶ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women, Canada*, para. 69.

⁷ CEDAW/C/CAN/CO/7, para. 18.

⁸ Human Rights Committee, *Lovelace v. Canada*, decision of admissibility of 14 August 1979.

based discrimination. He maintains that the ongoing discrimination under various versions of the Indian Act has plagued the members of his matrilineal indigenous bloodline since 1927, allowing four generations to be exposed to gender-based discrimination simply because his indigenous grandparent was female instead of male.

State party's additional observations

7.1 In observations submitted on 26 March 2015, the State party indicated that it respectfully disagreed with the conclusions of the Inter-American Commission on Human Rights and the Special Rapporteur on the rights of indigenous peoples.

7.2 The State party submitted that, in February 2015, the Superior Court of Quebec had concluded its hearing of a constitutional challenge to the registration provisions of the Indian Act, in the case of *Descheneaux v. Canada (Attorney General)*, in relation to someone in a very similar situation to the author. Given that the Court was expected to release its decision in August 2015, the State party was of the view that it would be inappropriate for the Committee to consider the merits of the communication while the issue remained before the Canadian courts.

7.3 On 6 May 2015, the State party submitted that, in the complaint submitted by the author, the Federal Court finally dismissed the judicial review. According to the State party, the author must bring a claim of discrimination under the Canadian Charter of Rights and Freedoms.

7.4 On 8 October 2015, the State party submitted that, in August 2015, the Superior Court of Quebec had rendered its decision in *Descheneaux v. Canada (Attorney General)*, concluding that the registration provisions of the Indian Act violated the Charter. The Court ordered legislative amendments. The Attorney General submitted an appeal. The State party remains of the view that it would be inappropriate for the Committee to consider the merits of the communication while the issue raised remains active before the national courts.

Suspension of consideration of the communication

State party's request for suspension

8. On 21 June 2016, the State party submitted that, in February 2016, the newly elected Government had withdrawn its appeal in *Descheneaux v. Canada (Attorney General)* and that it was exploring legislative changes. As that process would likely have an effect on the issues raised by the author, the State party requested that the Committee suspend consideration of the communication until the forthcoming policy process was completed.

Suspension of consideration of the communication

9. On 14 March 2017, the Committee decided to suspend consideration of the communication until 24 August 2017, owing to the State party's decision to explore legislative changes.

Author's comments on, and request to lift, the suspension

10. On 22 June 2017, the author submitted that he would have liked to have provided comments on the State party's request for suspension of consideration of the communication prior the Committee taking its decision. He recalled that, on 16 June 2017, Bill S-3 – submitted in response to the judgment in *Descheneaux v. Canada (Attorney General)* – had been passed by Parliament. According to the author, Bill S-3 of 2017, Bill C-3 of 2011 and Bill C-31 of 1985 were three failed attempts to resolve the matter of gender-based discrimination. The author requested the Committee to lift the suspension of consideration of the communication.

State party's request to maintain the suspension

11.1 On 24 August 2017, the State party submitted that, in October 2016, Bill S-3, "An act to amend the Indian Act to eliminate sex-based inequities in Indian registration", was introduced in the Senate.

11.2 The State party provided an update to the Committee on the author's complaint under the Canadian Human Rights Act. After the Federal Court dismissed the appeal of the Canadian Human Rights Commission, as did the Federal Court of Appeal on 30 March 2017, the Supreme Court granted leave to appeal; the case was scheduled to be heard in November 2017. Therefore, the State party requested the Committee to maintain the suspension of consideration of the communication.

Author's additional comments

12.1 On 11 October 2017, the author specified that the title of Bill S-3 had been changed to "An Act to amend the Indian Act in response to the Superior Court of Quebec decision in *Descheneaux v. Canada (Attorney General)*".

12.2 The author recalls that, according to the report of the Committee on its inquiry concerning Canada conducted under article 8 of the Optional Protocol,⁹ the ongoing historical discrimination was a root cause of the abnormally high level of missing and murdered indigenous women in Canada.

12.3 On 13 December 2017, the author submitted that, the previous day, the Governor General had signed Bill S-3, containing provisions known to be discriminatory on the basis of gender, birth dates and marriage dates. He submitted that all of the amendments (Bill C-31, Bill C-3 and Bill S-3) have contained provisions that were discriminatory against his family.

12.4 On 14 June 2018, the author informed the Committee that, in his case, the Supreme Court had ruled that, because the Canadian Human Rights Tribunal could not overturn discriminatory laws, the Tribunal did not have the power to decide whether parts of the Indian Act were discriminatory.

Lifting of the suspension of consideration of the communication

13. On 5 April 2019, the Committee decided to lift the suspension of consideration of the communication.

State party's observations on admissibility and the merits

14.1 On 29 June 2020, the State party reiterated its position that the author had not exhausted domestic remedies, having failed to bring a constitutional claim of discrimination. It clarifies that there are a number of avenues available to the author that might allow him to pursue a claim of discrimination, including by seeking pro bono legal representation or donations to fund his defence or applying to a legal aid programme or the Court Challenges Program.

14.2 The State party clarifies that the Canadian Human Rights Act does not allow for a challenge to the Indian Act where there is no allegation of a discriminatory practice. The question before the Canadian Human Rights Tribunal in the author's case was whether the author's complaint was directly related to legislation, i.e. the Indian Act, or whether it was a complaint about a discriminatory practice. The Tribunal found that the author's complaint had been properly characterized as a challenge to legislation.

⁹ CEDAW/C/OP.8/CAN/1.

14.3 The State party submits that the communication is moot, because the basis for the claim of gender-based discrimination no longer exists. Since the entry into force on 15 August 2019 of Bill S-3, all sex-based inequities have been removed from the Indian Act and all descendants of status Indian women who had lost status upon marrying non-Indian men became entitled to registration. Women who had lost Indian status, and their children who had previously obtained status under paragraph 6 (1) (c) of the Act, became entitled to be registered under new paragraph 6 (1) (a.1). Their children born prior to 17 April 1985, or from a marriage that occurred before that date, who had previously been entitled to be registered under paragraph 6 (1) (c.1), became entitled to be registered under new paragraph 6 (1) (a.3), and any of their descendants born prior to 17 April 1985, or from a marriage entered into prior to that date, also became entitled to be registered under new paragraph 6 (1) (a.3).

14.4 The State party submits that, on 11 March 2020, the Office of the Indian Registrar informed the author of his registration under new paragraph 6 (1) (a.3) of the Indian Act, which had been triggered by his grandmother's adjusted registration under new paragraph 6 (1) (a.1). The author's children also became entitled to registration. The differential treatment of children born prior to and after the amendments of 1985 was based entirely on the date of the adoption of a new legislative scheme governing entitlement to registration. Any differential treatment based on dates does not constitute discrimination. According to the State party, the provisions of the amended Indian Act no longer constitute gender-based discrimination, given that, under the amendments of 2019, great-grandchildren from a maternal line and those from a paternal line, with the same birth and marriage dates, receive equal treatment.

Author's comments on the State party's observations on admissibility and the merits

15.1 On 14 September 2020, the author submitted comments to the effect that the rule concerning the exhaustion of domestic remedies did not apply if the application of such remedies was unlikely to bring effective relief. The author recalls that the Committee found the communication in *Kell v. Canada* admissible,¹⁰ concluding that, even assuming that domestic remedies had not been exhausted, the application of those remedies was unlikely to bring effective relief to the author. The author of the present communication reiterates that numerous domestic cases on exactly the same issue, lodged in jurisdictions up to the Supreme Court, have not brought about reparations for the victims, given that all the resulting legislative reforms (Bill C-31 of 1985, Bill C-3 of 2011 and Bill S-3 of 2019) have contained provisions that were discriminatory on the basis of gender.

15.2 The author submits that funding for the Court Challenges Program was cut from 1992 to 1994, then reinstated from 1994 to 2006, but was not available for new applicants. Moreover, according to the indigenous lawyer and scholar Naomi Metallic:

No other disadvantaged group in Canada ... has faced a law like section 67 of the Canadian Human Rights Act that actually prohibited claims against the law that is the largest source of discrimination for many Aboriginal people – the Indian Act ... Although no similar explicit bans exist within the Canadian Bill of Rights and the Charter, court decisions interpreting the equality guarantees in both documents have made challenges to the Indian Act ... effectively out of bounds ... My review of the cases has led me to the conclusion that Aboriginal peoples in Canada are long overdue the opportunity to have their equality complaints heard on the merits, by decision-makers who truly appreciate the

¹⁰ CEDAW/C/51/D/19/2008, para. 7.3.

historical facts, legal and jurisdiction[al] issue[s] and sociological phenomen[a] that must be understood to properly adjudicate these claims.¹¹

15.3 The author submits that not all provisions that are discriminatory on the basis of gender have been removed from the Indian Act; section 6 still provides for differential treatment of the author and his descendants. Indeed, the current 1985 cut-off date is as arbitrary as the former 1951 cut-off date, because it still displaces or disentitles indigenous women's descendants from registration and is one of many intersecting components that result in the denial of the author's children and future grandchildren of equal entitlement. In that regard, in her report to Parliament of 2019,¹² the Special Representative of the Minister of Crown-Indigenous Relations, Claudette Dumont-Smith, highlighted that: "Whether an individual is born or married before or after the effective date of Bill C-31 (April 17, 1985) may impact registration of individuals and result in the denial of status and related benefits." She noted that all persons who currently were entitled under section 6 (2) – as is the case for the author's children – should become entitled under section 6 (1). In conclusion, according to the author, the long-standing distinction between the recognition of status for patrilineal descendants, but not matrilineal descendants, has contributed to the stigmatization of descendants of the maternal line.

15.4 The author further transmits dozens of letters of support from international non-governmental organizations, national indigenous organizations and universities, including the following:

(a) Cultural Survival, which disagreed with the State party's assessment that the case was moot, given that there continued to be ongoing effects of the provisions that were discriminatory on the basis of gender in the Indian Act. Indeed, Bill S-3 did not adequately resolve the discrimination faced by the descendants of disenfranchised indigenous women. The text was adopted excluding the Senate Committee's amendment, which would have given indigenous women and their descendants born prior to 17 April 1985 equal status with indigenous men and their descendants born prior to 17 April 1985. In particular, the changes did allow the author's children to enrol as status Indians, but did not, as recommended by the Committee,¹³ ensure that descendants of indigenous women enjoyed the same status rights as descendants of indigenous men. The author's children were able to register only under section 6 (2), which did not permit individuals to transmit their status to their own children, unless a child's other parent also possessed Indian status. Although the amended policy was not explicitly discriminatory against indigenous women, it failed to remedy effectively the earlier discriminatory policy; if the author's grandmother had retained full status, then the author's children would have been eligible under section 6 (1) and would have been able to pass on their status to their children, regardless of the status of their future partner. The cut-off rule continued to disenfranchise the descendants of indigenous women on the basis of gender. Such bureaucratic rules violated the principle of self-determination and the fundamental rights of indigenous peoples, as recognized in articles 8 and 9 of the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada, to belong to an indigenous community or nation, in accordance with its traditions and practices. Cultural Survival encouraged the Committee to fully resolve the ongoing historical discrimination and to acknowledge the author's widespread support across indigenous peoples and their organizations. Cultural Survival also expressed its concern regarding the State party's claim that the author had not exhausted all domestic remedies; he had spent countless hours over 10 years bringing his case to the Supreme Court. In declining to rule on his case, the Supreme

¹¹ Naiomi Metallic, "The door has a tendency to swing shut: the saga of Aboriginal peoples' equality claims", 2 August 2014. Available at <https://ssrn.com/abstract=3044849>.

¹² Available at www.rcaanc-cirnac.gc.ca/eng/1560878580290/1568897675238.

¹³ CEDAW/C/CAN/CO/8-9, para. 13.

Court had endorsed a narrow interpretation of the Human Rights Act and left little recourse to First Nations women and their descendants, who lacked institutional power and funds for decades-long legal battles in defence of their rights;

(b) Human Rights Watch, which noted that the Indian Act had been a primary instrument of the State party's policy of colonization, which, according to the Truth and Reconciliation Commission of Canada, had suppressed Aboriginal culture and languages, disrupted Aboriginal government, destroyed Aboriginal economies and confined Aboriginal people to marginal and often unproductive lands. While the gradual implementation of Bill S-3 had made significant improvements, including by restoring 6 (1) (a) status to the author, his children continued to be disqualified from receiving similar status because they did not meet the criterion that their parents must have married prior to 1985. Unlike their cousins, whose parents married prior to 1985, the author's children could be granted status only under section 6 (2) – a cut-off rule arbitrarily based on the year of marriage – which effectively denied future generations of their families status under the Indian Act. The rule is discriminatory towards people of indigenous matrilineal descent whose parents were married after 1985. The State party's piecemeal reforms to the Indian Act over the years had proved insufficient and left room for continued gender-based discrimination. Human Rights Watch also expressed its concerns about increasingly limited access to justice for indigenous people seeking redress, especially in the light of the Supreme Court ruling of June 2018 that, because the Canadian Human Rights Tribunal could not overturn discriminatory laws, the Tribunal did not have the power to decide whether parts of the Indian Act were discriminatory. In the light of the length of time that the proceedings have been pending, the organization also pushed back against the State party's claim that the author had not exhausted all domestic remedies;

(c) Amnesty International, which submitted that the author was among tens of thousands of people in Canada who continued to be discriminated against, because of the ongoing failure of the State party to address fully the adverse effects of the historical gender inequality in the Indian Act, which represented a historical effort to forcibly assimilate indigenous peoples;

(d) Assembly of First Nations, which submitted that Bill S-3 was adopted without adequate consultation with indigenous peoples, resulting in legislation that did not respect their fundamental rights;

(e) British Columbia Association of Aboriginal Friendship Centres, which serves the needs of indigenous peoples displaced from their traditional lands and associated cultural practices because of exclusion owing to Indian status, and which submitted that the Indian Act remained a legislative tool that effectively assimilated indigenous peoples over time;

(f) Native Women's Association of Canada, which submitted that, in the light of the considerable hurdles that indigenous people, like the author, had regularly faced in gaining access to justice, it was not coincidental that, in its final report, the National Inquiry into Missing and Murdered Indigenous Women and Girls¹⁴ called for the creation of a national indigenous and human rights ombudsperson and a related national indigenous and human rights tribunal;

(g) Union of British Columbia Indian Chiefs, which submitted that the amendments of 2019 had failed to provide full remedy to indigenous women and their descendants affected by the historical and ongoing assimilative provisions of the Indian Act. Indeed, given the continuing imposition of a cut-off in the determination of status, the author's children had become eligible for registration only under section 6 (2), unlike their cousins, who were eligible for registration under

¹⁴ Available at www.mmiwg-ffada.ca/final-report/.

section 6 (1), which left them unable to freely transmit their status to their own children, as a direct result of the disenfranchisement of their maternal ancestor. Canada had chosen to take a piecemeal approach to amending the discriminatory provisions, motivated only through numerous legal challenges, rather than to end the discrimination completely;

(h) British Columbia Civil Liberties Association, which submitted that the sex-based discrimination perpetuated by the Indian Act was antithetical to gender equality and dated back to 1850, when an “Indian” was legally defined as a male person of Indian blood. Today, Bill S-3 remained discriminatory.

15.5 The author submits that it is abnormal that the State party’s legislation determines who merits to belong, or not, to an indigenous people. The author’s ancestor, Chief Thomas Chillihtin of Cheakamus, was one of 16 leaders who, in 1921, amalgamated 16 indigenous communities into what is now the Squamish Nation. Prior to that, all of the communities faced immense pressures, given that their ancestral territories were surrounded by non-indigenous people acquiring their land and in the middle of rapid development. The Chief presented to the Royal Commission in North Vancouver, on behalf of the Squamish Nation, his prediction on the loss of their culture, stating that: “When the white man came, he was allowed to go where he pleased to hunt, trap or fish. Then our troubles began. The white man thought we ate too much fish and passed laws to prevent our people fishing, except for a short time each year.” The author submits that, still in 2020, the State party takes a similar approach through its policies that have banished and removed indigenous women, their children and their descendants from their communities, due to historical and current discrimination.

State party’s additional submission

16.1 On 5 February 2021, the State party reiterated its position that sex-based inequities had been eliminated from the legislation.

16.2 The State party acknowledges that, according to the Department of Indigenous Services, the new cut-off date will likely require legislative changes.

Issues and proceedings before the Committee

Consideration of admissibility

17.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4) of the Committee’s rules of procedure, it is to do so before considering the merits of the communication.

17.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

17.3 The Committee takes note of the State party’s argument that the communication should be declared inadmissible under article 2 of the Optional Protocol, because, as a man, the author cannot claim to be a victim. The Committee also takes note of the author’s contentions that article 2 of the Optional Protocol does not require individuals submitting a communication and claiming to be victims of gender-based discrimination to be women, that the author and his children are victims because they are matrilineal indigenous descendants and that the State party discriminates against indigenous women and their descendants under the Indian Act. The Committee recalls that article 2 of the Optional Protocol establishes that communications may be submitted by or on behalf of “individuals”, without limiting the victim status to “women”. The Committee notes that the author claims, on his own behalf and on

behalf of his daughter and son, that they are all victims of violations in their capacity as descendants of an indigenous woman who lost her indigenous status and the right to determine her own identity, owing to gender inequalities in the Indian Act, which was unilaterally established by the State party. In that regard, the alleged violations stem from the gender of the author's grandmother and would not have existed had the author's indigenous status originated from his grandfather. The Committee notes that the author claims that he and his children are victims of the consequences of gender-based discrimination originally perpetuated against his grandmother. The Committee observes that, by having posthumously granted the author's grandmother, Ms. Johnson, adjusted registration status under new paragraph 6 (1) (a.1), the State party has recognized the discrimination suffered by Ms. Johnson herself. The Committee is of the view that the historical gender-based discrimination against Ms. Johnson still affects her descendants, taking into consideration that they allege that they cannot enjoy their fundamental rights to be freely recognized as indigenous people and cannot freely transmit their status to their children. In that regard, the Committee is of the view that the descendants, women and men (such as the author and his children), of indigenous women who lost their indigenous status and the right to determine their own identity owing to gender inequalities unilaterally established by the State party, qualify as direct victims under the Optional Protocol, given that the harm invoked is a direct result of the gender-based discrimination against their matrilineal ascendants.¹⁵ The Committee recalls that the transgenerational harm of some human rights violations perpetrated against women has been analysed in a joint statement of the Committee and the Committee on the Rights of the Child.¹⁶ In the light of the foregoing, the Committee on the Elimination of Discrimination against Women considers that it is not precluded, by virtue of the requirements of article 2 of the Optional Protocol, from considering the present communication, not only in relation to the author's daughter, I.D.M., but also in relation to the author and his son.

17.4 The Committee takes note of the State party's initial argument that the communication should be declared inadmissible for lack of exhaustion of domestic remedies, given that the author's complaint lodged in 2008 under the Canadian Human Rights Act was still pending. In 2015, the Canadian Human Rights Commission had applied for judicial review of the ruling of the Canadian Human Rights Tribunal, according to which it could not hear a complaint concerning the provisions of the Indian Act. The Committee observes that the Federal Court subsequently dismissed the judicial review, as did the Federal Court of Appeal, and that, in 2017, the Supreme Court of Canada granted leave to appeal but finally declined to rule on the case in 2018. The Committee notes that it took 10 years for the author's complaint to reach the Supreme Court, which ultimately declined to rule on the case.

17.5 The Committee takes note of the State party's claim that the author did not exhaust domestic remedies because he failed to also bring a constitutional claim of discrimination under the Canadian Charter of Rights and Freedoms, having the possibility of seeking pro bono legal representation or donations to fund his defence or to apply to a legal aid programme or the Court Challenges Program. Nonetheless,

¹⁵ See, for example, International Criminal Court, *Prosecutor v. Bosco Ntaganda*, case No. ICC-01/04-02/06, Reparations Order of 8 March 2021, para. 122: "children born out of rape and sexual slavery may qualify as direct victims, as the harm they suffered is a direct result of the commission of the crimes"; para. 123: "The Chamber notes that recognising children born out of rape and sexual slavery as direct rather than indirect victims is an acknowledgment of the particular harm they suffered and may constitute an adequate measure of satisfaction, in addition to other forms of reparations that may be awarded to them."

¹⁶ Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, joint statement on ensuring prevention, protection and assistance for children born of conflict-related rape and for their mothers. See also [CRC/C/OPAC/DZA/CO/1](#), para. 23.

the Committee also takes note of the author's submission that the rule on exhaustion of domestic remedies does not apply if the application of such remedies is unlikely to bring effective relief, as recognized by the Committee in *Kell v. Canada*, and that, in particular, a Charter remedy would have been ineffective and unreasonably prolonged, given that Ms. McIvor, for example, was obliged to wait for 26 years to receive a partial remedy. According to the author, it is very expensive to sustain such legal action, given that he has a very low annual income and is a beneficiary of a Canadian disability pension plan, and considering that the Court Challenges Program does not have sufficient funding. The Committee observes that three constitutional claims on the same issue resulted in three sets of legislative reforms, in 1985, 2011 and 2019, that allegedly maintain the provisions that are discriminatory on the basis of gender raised by the author in the present communication. The Committee is therefore of the view that the constitutional claim referred to by the State party would have been unreasonably prolonged and unlikely to bring effective relief to the author and his children. The Committee therefore concludes that it is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication.

17.6 The Committee takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (b) of the Optional Protocol under the provisions of the Convention, because the distinction alleged by the author is not on the basis of sex, but rather on the basis of lineage, which is not grounds of discrimination under the Convention. Nevertheless, the Committee notes that the State party has acknowledged on several occasions the gender-based inequities in the registration provisions of the Indian Act (see paras. 14.3 and 16.1 above) and that Bill S-3 itself was initially called "An act to amend the Indian Act to eliminate sex-based inequities in Indian registration" (see para. 11.1 above). Moreover, the Committee considers that the communication relates to distinctions between individuals depending on their maternal or paternal lineage, thereby conferring on the Committee the competence to examine it. The Committee therefore considers that it is not precluded, by virtue of the requirements of article 4 (2) (b) of the Optional Protocol, from considering the present communication.

17.7 The Committee takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (e) of the Optional Protocol, because the facts on which the alleged discrimination is based – the author's grandmother's loss of entitlement in 1927 – occurred prior to the entry into force of the Optional Protocol for Canada. The Committee also takes note of the author's argument, referring to reports of the Inter-American Commission on Human Rights, the Special Rapporteur on the rights of indigenous peoples and the Committee itself, that the alleged violations are ongoing and also emanate from the amendments of 2011 and 2019. The Committee observes that, although the starting date of the alleged discrimination is 1927, before the entry into force of the Optional Protocol for the State party, the loss of entitlement of the author's grandmother has current consequences for her descendants. Moreover, the legislative amendments that allegedly perpetuate the effects of the discrimination came into force after 2003, that is, after the Optional Protocol had entered into force for the State party. Therefore, the alleged failure of the State party to protect the complainant and his children against the alleged violations occurred after the State party's recognition of the Committee's competence under the Optional Protocol.¹⁷ In such circumstances, the Committee considers that it is not precluded *ratione temporis* under article 4 (2) (e)

¹⁷ The Committee recalls that it has previously observed that the remaining discriminatory provisions of the Indian Act continued to affect indigenous women and their descendants (CEDAW/C/CAN/CO/8-9, para. 13). See also Human Rights Committee, *McIvor and Grismer v. Canada* (CCPR/C/124/D/2020/2010), para. 6.3.

of the Optional Protocol from considering the complainant's allegations regarding violations of his and his children's rights.

17.8 Having found no impediment to the admissibility of the communication, the Committee proceeds to its consideration of the merits.

Consideration of the merits

18.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

Article 1

18.2 The author alleges that the State party discriminated against him and his children, as the grandchild and great-grandchildren of a woman subjected to differential treatment on the basis of her gender. The author considers that that constitutes discrimination, due to their indigenous status being based on their maternal indigenous lineage and not on a paternal indigenous lineage. The author maintains that the ongoing discrimination under the Indian Act has plagued his maternal indigenous bloodline since 1927, allowing four generations to be exposed to gender-based discrimination and violating his and his children's fundamental rights to belong to an indigenous people and to transmit their cultural identity according to their own traditional practices. The State party argues that the sex-based distinction between maternal and paternal lines has been removed with the amendments of 2019 and that great-grandchildren from a maternal line have an equal opportunity for Indian status as do great-grandchildren of a paternal line with the same birth and marriage dates. The State party indicates that, in 2019, the author was registered with status under paragraph 6 (1) (a.3) and his children are entitled to registration under section 6 (2), because of a differential treatment that they receive on the basis of the date of the adoption of a new legislative scheme governing entitlement to registration, which no longer constitutes gender-based discrimination under article 1 of the Convention. It also submits that, at its core, the communication concerns the criteria for the determination of who is eligible to be registered as an Indian, indicating that the legislation seeks to ensure that those who are eligible for Indian status have a sufficient degree of descent from the historical First Nations peoples. According to the State party, there is no human right to be registered as indigenous.

18.3 The Committee observes that, because the author is a disenfranchised matrilineal indigenous descendant, he was denied status as indigenous and the right to fully determine his own identity until 2011, when he could recover only limited status, being then unable to pass on his cultural identity to his children. Only in 2019 – owing to his grandmother's posthumously adjusted registration under new paragraph 6 (1) (a.1) – could the author's status be upgraded from registration under section 6 (2) to registration under paragraph 6 (1) (a.3). As a consequence, the author's children were recognized as indigenous under status 6 (2) only, which still does not give them the right to freely pass on their indigenous status to their children. The Committee observes that the cut-off rules are unilaterally established by the State party and currently apply only to descendants of indigenous women who previously lost their indigenous status and the right to determine their own identity, resulting in differentiation in status in comparison with descendants of indigenous men; the cut-off rules are therefore precisely what is affecting the author and his children, whose indigenous status comes from their maternal and not paternal lineage. Indeed, the Committee also observes that the amendments of 2011 allowed the grandchildren of disenfranchised women to regain eligibility, provided that they were born after 1951, and only under a limited status that made their ability to pass on status to their own children dependent on the status of the other parent. The Committee further observes

that the amendments of 2019 replaced the 1951 cut-off date with the 1985 cut-off date. The Committee is of the view that the cut-off rules established by the State party affect in a discriminatory manner the descendants of indigenous women who had been disenfranchised in comparison with the descendants of status Indian men who, because they traced their descent from the male line, were never affected by the disenfranchisements of the past. As noted by Human Rights Watch, the latter cut-off rule was discriminatory to people whose parents from an indigenous maternal lineage were married after 1985 (see para. 15.4 b above). In the present case, the discriminatory treatment of the author's grandmother was based on gender, as acknowledged by the State party. Considering that that is the basis of the ongoing effects on the author and his children, namely, the lack of full recognition as indigenous by the State party, thereby affecting their right to freely transmit that status and their cultural identity, the Committee concludes that, even if not currently based on the gender of the descendants themselves, but on dates of birth or marriage, the Indian Act perpetuates in practice the differential treatment of descendants of previously disenfranchised indigenous women, which constitutes transgenerational discrimination, falling within the scope and meaning of article 1 of the Convention.

18.4 The Committee considers that, contrary to the State party's assertion, indigenous peoples do have the fundamental right to be recognized as such, as a consequence of the fundamental self-identification criterion established in international law. Article 9 of the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada, affirms that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.¹⁸ It is essential to combating and preventing forced assimilation; indeed, according to article 8 of the Declaration, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and, as a consequence, States must provide effective mechanisms for the prevention of, and redress for, any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities. Moreover, the Committee observes that, according to the Inter-American Court of Human Rights, the identification of an indigenous community, from its name to its membership, is a social and historical fact that is part of its autonomy, and therefore States must restrict themselves to respecting the corresponding decision made by the community, i.e., the way in which it identifies itself.¹⁹ In the present communication, the Committee considers that the unequal criteria by which men and women are permitted, according to the State party, to transmit their indigenous identity to their descendants, is an element which is precisely contrary to this fundamental right to self-identification.

Articles 2 and 3

18.5 The author alleges that the 1985 cut-off date introduced in the amendments of 2019 is as arbitrary as the previous 1951 cut-off date, because it still displaces or disentitles indigenous women's descendants from registration. Indeed, the long-standing distinction between the status afforded to descendants of the paternal line, compared with those of the maternal line, which has contributed to the stigmatization of matrilineal descendants, is still present in the most recent version of the Indian Act. The author submits that the reforms were carried out without adequate consultation with indigenous peoples and that the State party ignored the views of indigenous

¹⁸ See also International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1 (2); and [CERD/C/CAN/CO/21-23](#), para. 6 (a).

¹⁹ Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, judgment of 24 August 2010, para. 37. See also *Case of the Saramaka People v. Suriname*, judgment of 28 November 2007, Series C, No. 172, para. 164.

peoples' organizations and leading advocates for indigenous women's rights who called for a process of broader reform to fully and finally eliminate all discriminatory provisions of the Act concerning registration status. The Committee notes that the State party argues that it has fully met its obligations under articles 2 and 3 of the Convention, because there is no more gender-based discrimination, but a differentiation based only on birth and marriage dates, and because the level of consultations with indigenous peoples is not relevant to the question of whether the registration provisions are discriminatory against women.

18.6 The Committee observes that, prior to 1985, the Indian Act contained provisions that were explicitly discriminatory against indigenous women by taking away their Indian status if they married non-status men. The author's paternal grandmother, the daughter of a leader of the Squamish Nation, lost her Indian status because she married a non-indigenous man after having been forcibly placed by the State party in a residential school. When the author was born, he was not entitled to Indian status.

18.7 The Committee notes that, although the amendments of 1985 allowed for women who had been disenfranchised for marrying non-indigenous men to have their indigenous status restored, they perpetuated further discrimination against those women's descendants by creating a registration scheme to classify "Indians" into two main categories and by creating a second generation cut-off rule that applied only to maternal descendants of the indigenous women who had been disenfranchised. As a result, the author's paternal grandmother recovered her Indian status but was able to pass on only limited status to her son (the author's father). The author's registration was therefore denied at that time.

18.8 The Committee observes that the amendments of 2011 allowed for the grandchildren of disenfranchised women to regain eligibility, provided that they were born after 1951, under a limited status that made their ability to transmit status to their own children dependent on the status of the other parent. Once again, that restriction did not apply to status Indians who, because they traced their descent from the male line, were not affected by the disenfranchisements of the past. As a result, the author was registered for Indian status the first time, but only under the more restrictive form of such status; he could not pass on his status to his children. By comparison, descendants from a single status Indian grandfather would never have lost status and therefore would be able to pass on their status. The Committee observes that the State party itself recognized that, with the amendments of 2011, for the first time, the author was eligible for status under section 6 (2), i.e., although he had received status, he would not be eligible to transmit his status to his children, but that, on the contrary, the grandchildren of indigenous men who had married non-indigenous women prior to 1985 had status under section 6 (1), rather than 6 (2); unlike the author's children, a great-grandchild of an indigenous man was also eligible to be registered.

18.9 The Committee notes that, with the amendments of 2019, because of his grandmother's adjusted registration under new paragraph 6 (1) (a.1), the author was registered under new paragraph 6 (1) (a.3). His children, whose status has now been recognized for the first time, are registered only under section 6 (2), which confers more limited status, because their parents were married after the 1985 cut-off date. Therefore, they are not allowed to freely transmit their status to their own children, unless their children's other parent also possesses Indian status. The Committee observes that, according to the report of the Special Representative of the Minister of Crown-Indigenous Relations, all persons who are currently eligible to be registered under the section 6 (2) provision should be entitled under section 6 (1). The Committee also observes that specialists in indigenous rights are of the view that, because the amendments of 2019 were adopted without the proposed amendment that would have given indigenous women and their descendants equal status with

indigenous men and their descendants, they do not adequately resolve the discrimination faced by the descendants of disenfranchised indigenous women. According to those specialists, although the amended law does not explicitly discriminate against indigenous women, it fails to effectively remedy the earlier discriminatory policy; if the author's grandmother had retained full status, on an equal basis with men of her generation in similar circumstances, then the author's children would be eligible under section 6 (1) and would be able to pass on their status to their children, regardless of the status of their future partner, as patrilineal descendants are able to do.²⁰

18.10 The Committee therefore considers that the 1985 cut-off rule under the amendments of 2019, even if not currently based on the gender of the descendants themselves, perpetuates in practice the differential treatment of descendants of previously disenfranchised indigenous women. As a result of the disenfranchisement of his maternal ancestor, the author cannot freely transmit his indigenous status, and his indigenous identity, to his children and, as a consequence, his children in turn will not be able to transmit freely their status to their own children. The Committee notes that the State party has acknowledged that, according to the Department of Indigenous Services, the new cut-off date will likely require legislative changes (see para. 16.2), precisely because of the current inequities based on the previous, explicit gender-based discrimination. The Committee is therefore of the view that the consequences of the denial of Indian status to the author's maternal ancestor has not yet been fully remedied, being precisely the source of the current discrimination faced by the author and his children. As a consequence, the Committee concludes that the State party has breached its obligations under articles 2 and 3 of the Convention.

18.11 The Committee reminds the State party that failure to consult indigenous peoples and indigenous women whenever their rights may be affected constitutes a form of discrimination.²¹

19. Acting under article 7 (3) of the Optional Protocol, and in the light of the foregoing, the Committee is of the view that the State party has failed to fulfil its obligations under the Convention and has thereby violated the rights of the author and his children under articles 1, 2 and 3 thereof.

20. The Committee makes the following recommendations to the State party:

(a) Concerning the author and his children: provide appropriate reparation to them, including recognizing them as indigenous people with full legal capacity, without any conditions, to transmit their indigenous status and identity to their descendants;

(b) In general:

(i) Amend its legislation, after an adequate process of free, prior and informed consultation, to address fully the adverse effects of the historical gender inequality in the Indian Act and to enshrine the fundamental criterion of self-identification, including by eliminating cut-off dates in the registration provisions and taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants;

²⁰ See *Naiomi Metallic* (para. 15.2 above); *Cultural Survival* (para. 15.4 (a) above); *Human Rights Watch* (para. 15.4 (b) above); and *Union of British Columbia Indian Chiefs* (para. 15.4 (g) above).

²¹ *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), para. 6.7. Moreover, the obligation to obtain free, prior and informed consent has been qualified as a general principle of international law. See also *Inter-American Court of Human Rights, Kichwa Indigenous People of Sarayaku v. Ecuador*, judgment of 27 June 2012, para. 164.

(ii) Allocate sufficient resources for the implementation of the amendments of the law.

21. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all sectors of society, in particular the Squamish Nation.
