United Nations CCPR/C/123/D/2348/2014

International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
7 August 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2348/2014*, **

Communication submitted by:	Ms. Nell Toussaint (represented by counsel, Mr. Andrew Dekany and by Mr. Bruce Porter, Social Rights Advocacy Centre)
Alleged victim:	The author
State party:	Canada
Date of communication:	24 December 2013 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 14 February 2014 (not issued in document form)
Date of adoption of Views:	24 July 2018
Subject matter:	Denial of access to health insurance and health care and its consequences for author's life and health
Procedural issues:	Victim status (*actio popularis*), abuse of submission - incompatibility with the Covenant, non-exhaustion of domestic remedies
Substantive issues:	Right to equal protection without distinction of any kind, right to an effective remedy, right to life, risk of ill-treatment, right to security of person, and right to equality before the law
Articles of the Covenant:	2(1), 2(3)(a), 6, 7, 9(1) and 26

* Adopted by the Committee at its 123rd session (2 – 27 July 2018).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval. Pursuant to rule 90 (1) (a) of the Committee's rules of procedures, Marcia V. J. Kran did not participate in the examination of the present communication.

Articles of the Optional Protocol: 1, 2, 3 and 5 (2) (a) and (b)

Views under article 5 (4) of the Optional Protocol

1. The author of the communication is Ms. Nell Toussaint, a national of Grenada born in 1969, who has lived in Canada since 1999. She claims to be a victim of violations by Canada of her rights under articles 2(1), 2(3)(a), 6, 7, 9(1) and 26 of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author

2.1 On 11 December 1999, the author lawfully entered Canada as a visitor from Grenada. She worked in Canada from 1999 to 2008 without obtaining a residency status or permission to work. However, some of her employers made deductions from her salary to cover federal and provincial taxes, Canada Pension Plan, and Employment Insurance. During this period, she managed to pay privately for any medical costs.

2.2 Encouraged by an employer who wished to hire her permanently, the author began to seek regularization of her status in Canada in 2005. That year, she paid a significant part of her savings to an immigration consultant who turned out to be dishonest and provided no useful service. The author could not afford to make further attempts to regularize her status for some time.

2.3 In 2006, her health began to deteriorate as she developed chronic fatigue and abscesses. In November 2008, she became unable to work due to illness, and in 2009 her health deteriorated to a life-threatening status. In February 2009, she was diagnosed with pulmonary embolism and suffered from poorly controlled diabetes with complications of renal dysfunction, proteinuria, retinopathy and peripheral neuropathy, according to Dr. Guyatt, a Professor of Clinical Epidemiology & Biostatistics at McMaster University. Her neurological problems resulted in severe functional disability with marked reduction in mobility and impairment of basic activities. She also suffered from hyperlipidaemia and hypertension.

2.4 In 2008, the author received free assistance from a qualified immigration consultant and made an application for a permanent resident status on humanitarian and compassionate grounds to Citizenship and Immigration Canada (CIC).

2.5 In April 2009, the author was informed that she qualified for provincial social assistance under the Ontario Works program due to pending application for permanent residence in Canada based on humanitarian and compassionate grounds. She was also deemed eligible for social assistance from Ontario Disability Support Program but neither of these programs covers health care or the cost of fees for a humanitarian and compassionate application.

2.6 On 6 May 2009, she applied for health care coverage under the federal government's program of health care to immigrants, called the Interim Federal Health Benefit Program (IFHP),[1] established pursuant to a 1957 Order-in-Council (OIC).

2.7 On 10 July 2009, the author was denied health coverage under the IFHP by an immigration officer as she did not fit into any of the four categories of immigrants eligible for IFHP coverage as set out in the guidelines of the CIC: refugee claimants; resettled refugees; persons detained under the *Immigration and Refugee Protection Act*; and victims

[1] The IFHP was authorized to expend funds for medical or dental care, hospitalization, or any incidental expenses for immigrants or anyone "subject to immigration jurisdiction or for whom the immigration authorities feel responsible" where the person lacks the resources to pay the costs of the medical care.

of trafficking in persons. The life threatening nature of the author's health problems was not mentioned as a consideration.

2.8 The author sought judicial review before the Federal Court of Canada of the decision denying her health care coverage under the IFHP. She argued that the decision was in breach of her rights to life, to security of the person and to non-discrimination under sections 7 and 15, respectively, of the *Canadian Charter of Rights and Freedoms (Canadian Charter*), and that the immigration officer had failed to apply domestic law consistently with the international human rights treaties ratified by Canada. The author also provided the Court with extensive medical evidence proving that her life had been put at risk.

2.9 During the Federal Court procedures, Dr. Guyatt provided expert evidence describing the author's medical situation and the implications of non-provision of medical treatment of her health status.[2] Similarly, Dr. Hwang[3] commented on the likely medical consequences should she be unable to obtain adequate health care from a hospital.[4]

2.10 The Federal Court found that the evidence established a deprivation of the author's right to life and security of the person that was caused by her exclusion from the IFHP. However, the Court found that the deprivation of the rights to life and security of the person in the author's case was not contrary to section 7 of the Canadian Charter, that denying financial coverage for health care to persons who have chosen to enter or remain in Canada illegally is consistent with fundamental justice and that the impugned policy was a permissible means to discourage defiance of Canada's immigration laws.

2.11 The author then appealed to the Federal Court of Appeal arguing that the Court's decision was contrary to the right to life under article 6 of the Covenant and to protection from discrimination on the grounds of immigration status under international human rights law.

2.12 The Federal Court of Appeal upheld the Federal Court's finding that the author "was exposed to a significant risk to her life and health, a risk significant enough to trigger a violation of her rights to life and security of the person." The Court held, however, that the "operative cause" of the risk to her life was her decision to remain in Canada without legal status and agreed with the lower court's finding that the deprivation of the right to life and security of the person in this case accords with the principles of fundamental justice. The Federal Court of Appeal further held that discrimination on the grounds of immigration or citizenship status does not qualify for protection as an "analogous ground" of discrimination under the *Canadian Charter*. The Court also commented that in assessing whether the

[2] 'The author has severe medical problems that markedly impair her quality of life, are likely to decrease her longevity, and could be life-threatening over the short term. She requires intensive medical management by highly skilled professionals, including medical subspecialists. Negotiating pro bono care by a number of such doctors is clearly extremely unsatisfactory and potentially dangerous. Delays resulting from lack of coverage and an inability to pay for the health care that she needs and the risk that she will not have access to necessary services creates serious risk to her health and may have life threatening consequences.'

[3] A physician at St. Michael's Hospital and a professor in the Faculty of Medicine at the University of Toronto.

[4] 'The [author] would be at extremely high risk of suffering severe health consequences if she does not receive health care in a timely fashion. As noted above, she has already suffered from serious and to some degree irreversible health consequences due to lack of access to appropriate care, resulted in inadequately treated, uncontrolled diabetes and hypertension. As documented in her medical records, her inability to afford medications in the past has also contributed to the poor control of her diabetes and hypertension. If she were to not receive timely and appropriate health care and medications in the future, she would be at very high risk of immediate death (due to recurrent blood clots and pulmonary embolism), severe medium-term complications (such as kidney failure and subsequent requirement for dialysis), and other long-term complications of poorly-controlled diabetes.'

exclusion of immigrants without legal status from access to health care is justifiable as a reasonable limit under section 1 of the *Canadian Charter* appropriate weight should be given to "the interests of the state in defending its immigration laws." The Court held that while international human rights law can be considered in interpreting the *Canadian Charter*, it is not relevant in this case.

2.13 The author then sought leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada.[5] The application for leave to appeal was denied on 5 April 2012.[6]

2.14 Shortly after, the Government of Canada repealed the 1957 OIC and replaced it in 2012 with the Order Respecting the Interim Federal Health Program. The new policy in relation to access to the IFHP does not, however, provide undocumented migrants with health care coverage under the IFHP and makes no explicit exception for situations where life or health is at risk, except where there is a clear health risk to the public.

2.15 On 30 April 2013, the author became eligible for health care coverage as a result of her application for permanent residence based on spousal sponsorship, and a confirmation by the CIC that she met the criteria for spousal sponsorship. Since then, the author was granted health care coverage under the provincial Ontario Health Insurance Plan and has been receiving health care.

2.16 The author claims that she has exhausted all available and effective domestic remedies and that she has not submitted her communication to any other procedure of international investigation or settlement.

2.17 The remedy sought by the author is twofold. She requests the State party: 1) to ensure that illegal immigrants have access to IFHP coverage for health care necessary for the protection of their rights to life and security of person, and 2) to provide her with a compensation for the severe psychological distress, inhuman treatment and exposure to a risk to life and to long-term negative health consequences as a result of the violation of her rights.[7]

The complaint

3.1 The author claims that the State party violated its obligations under articles 2(1), 2(3)(a), 6, 7, 9(1) and 26 of the Covenant by denying her access to health care necessary for the protection of her life and health, from 10 July 2009 through 30 April 2013, on the basis of her irregular immigration status. She submits that she lacked the means to pay for the care herself.

3.2 The author submits that the exclusion from health care coverage on the basis of her particular "immigration status" constitutes a violation of her rights under articles 2(1) and 26 of the Covenant. The author asserts that the domestic courts' findings about the denial of health care on the basis of her immigration status is not an objective, proportionate or reasonable means of deterring illegal immigration. The author also submits that she did not migrate to Canada to secure health care; she decided to remain in Canada in order to work. She claims that excluding her from IFHP coverage on the basis of her 'immigration status' constituted a discriminatory distinction, and that her circumstances, particularly her life-threatening status, were not taken into consideration.

[5] A letter from the Office of the High Commissioner for Human Rights was attached to the application for leave to appeal, affirming the importance of the issues raised in relation to Canada's compliance with its international human rights treaty obligations.

[6] The Supreme Court of Canada grants leave to appeal only in exceptional circumstances and does not indicate the reasons for its negative decisions.

[7] According to the affidavit of an internal medicine doctor who testified in favour of the author before the federal court, it appears that she would suffer consequences from the past denial of access to health care.

3.3 The author further claims that the denial of access to health care put her life at risk and constituted cruel and inhuman treatment, in violation of her rights under articles 6 and 7 of the Covenant by the State party. She underscores that the Federal Court and the Federal Court of Appeal agreed with the fact that her life and health were placed at significant risk by the State party's denial of access to health care coverage under IFHP, thus claiming a violation of her rights to life and not to be subjected to cruel, inhuman or degrading treatment under articles 6 and 7 respectively.

3.4 The author further claims that the denial of such access caused her physical and mental suffering that may also constitute a violation of article 9(1). In this regard, the author requests that the Committee, which has generally restricted the application of article 9 to issues relating to administration of justice, extend the scope of the right to security of person under this article to also cover access to health care, pointing to such practice of the Canadian courts.

3.5 The author finally claims that the State party has violated article 2(3)(a) of the Covenant by failing to provide effective remedies for the discrimination she experienced on the ground of her immigration status, as well as for the violation of her rights to life and to security of person. The author submits that the domestic courts should have interpreted and applied the relevant domestic law in accordance with the Covenant. She adds that she was denied an effective remedy, as the domestic courts failed to refer to expert evidence about discriminatory stigmatization affecting undocumented migrants, by denying their access to health care.

State party's observations on admissibility

4.1 On 14 August 2014, the State party submitted its observations on admissibility, requesting separate consideration of admissibility from the merits.[8]

4.2 The State party submits that the author is not a victim of a violation according to articles 1 and 2 of the Optional Protocol, as she was ineligible to receive funding through the specialized IFHP federal program and she has been the beneficiary of a provincial health care coverage since April 2013 after having received a residence permit. The State party recalls the Committee's jurisprudence on *actio popularis*,[9] arguing that the author is not a representative of any victim claiming a violation among other potential undocumented migrants.

4.3 It asserts that the 1957 IFHP health program challenged by the author no longer exists, since it was replaced by the 2012 IFHP. Moreover, the 2012 IFHP was declared invalid on 4 July 2014 by the Federal Court for being inconsistent with sections 12 and 15 of the Canadian Charter. The Court held that the IFHP provisions jeopardize the health of vulnerable individuals and fails to show that the denial of health care coverage to those individuals was necessary to achieve any legitimate aim. The State party also claims that the author no longer has any need to obtain funding for medical care and that her medical needs have been addressed.

4.4 The State party also submits that the author has not exhausted available domestic remedies, since she failed to seek monetary compensation before domestic courts when she challenged the constitutionality of the IFHP.

[8] The State party's split request was denied on 1 December 2014, as its inadmissibility arguments were not elaborate, compared to the author's detailed comments, while disregarding the author's health status.

[9] See e.g. communications No. 318/1988, *E.P. et al. v. Colombia* (CCPR/C/39/D/318/1988), para 8.2; and No. 1632/2007, *Raymond-Jacques Picq v. France* (CCPR/C/94/D/1632/2007), para 6.2.

Author's comments on the State party's observations

5.1 On 2 November 2014, the author submitted her comments on the State party's observations.

5.2 She rejects the arguments that she does not qualify as a victim of the State party's policy of excluding undocumented migrants from IFHP coverage. She claims that her communication is not an *actio popularis*, as it does not address the effect of the impugned policy in general, but pertains to its application in her case in particular. The author submits that she relies on the findings of the domestic courts and that, as a result of the denial of IFHP coverage, she suffered severe psychological stress and was exposed to a risk to her life, as well as to long-term, and potentially irreversible, negative health consequences.

5.3 The author also rejects the State party's assertions that her claim that she was excluded from IFHP coverage for being an undocumented migrant has become moot because she is now receiving health care as a permanent resident. She argues that the provision of health care coverage since 2013 has neither removed nor provided compensation for the effects of psychological stress or long term health consequences of the denial of health care she suffered as an undocumented migrant.

5.4 She also rejects the State party's assertions that her communication should be found moot because the 1957 IFHP was replaced by an amended system in 2012. The changes to the IFHP modified some aspects of the eligibility of certain groups while continuing to deny coverage to undocumented migrants. The changes made by the State party have not remedied or mitigated in any way the exclusion of undocumented migrants from accessing to the IFHP.

5.5 Regarding the exhaustion of domestic remedies, the author submits that there were no other effective domestic remedies available which would allow for seeking monetary compensation for the violation of her rights under the Covenant. She claims to have exhausted available remedies in which she also requested monetary compensation for violations of the rights to life, security of the person and non-discrimination under the Canadian Charter. The author admits that she did not initiate separate litigation under domestic law to seek only the monetary compensation.

State party's observations on admissibility and the merits

6.1 On 2 April 2015, the State party submitted its observations on admissibility and the merits.

6.2 Regarding admissibility, the State party reiterates its observations of 14 August 2014 that the communication should be declared inadmissible. Canada implemented a new policy ("2014 Policy"), on 5 November 2014, to temporarily provide funded medical care to certain categories of foreign nationals with no legal status, claiming that the 2014 Policy allows the Minister to grant a more comprehensive range of medical coverage "because of exceptional and compelling circumstances". As of the date of the submission, discretionary medical coverage had been applied to the situation of migrants with no legal status in Canada, and granted in two such cases.

6.3 Regarding the merits, the State party considers the author's allegations with respect to articles 2, 6, 7, and 9(1) as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol and Rule 96 (d) of the Committee's Rules of Procedure.

6.4 Regarding article 2, the State party recalls the Committee's jurisprudence that the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a claim under the Optional Protocol.[10]

6.5 The State party recalls that article 6 provides a negative right prohibiting laws or action that cause arbitrary deprivations of life. The scope of the right to life cannot extend so far as to impose a positive obligation on States to provide an optimal level of state-funded medical insurance to undocumented migrants (inadmissibility *ratione materiae*).

6.6 The State party similarly argues that article 7 cannot be interpreted to impose a positive obligation to provide state funding for an optimal level of medical insurance.

6.7 The State party claims that the scope of article 9 (1) is generally limited to situations involving detention or other deprivations of liberty, although the Committee, in its General Comment No. 35, sought to expand its interpretation of the scope of the right to protection from "intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained."

6.8 Concerning the alleged violation of article 26 of the Covenant, the State party argues that health insurance coverage is provided to citizens and non-citizens, and foreign nationals with a wide variety of immigration statuses. It also submits that the denial of health care is justified, as the author does not have legal residence. The State party further submits that legal residence is a neutral, objective requirement that cannot be considered as a prohibited ground of discrimination.

Author's comments on the State party's observations

7.1 On 22 August 2015, the author rejected Canada's argument that the Covenant does not impose positive obligations on States under articles 6, 7 and 9(1) and that her claims are inadmissible *ratione materie*. This argument is inconsistent with General Comment 6 and the Committee's jurisprudence. She does not claim a right to health, but that specific rights under the Covenant have been violated in the context of access to health care through the IFHP. The author also submits that the right to life, the prohibition of inhuman and degrading treatment or punishment, the right to security of persons, and the right to non-discrimination must be fully protected with respect to situations involving access to health care, including for irregular migrants.

7.2 The author also rejects the State party's argument that emergency and *pro bono* medical care was sufficient to protect her Covenant rights, recalling that the Federal Court thoroughly reviewed the evidence with respect to access to emergency care and found that the author's life and long term health had been placed at risk. Moreover, the State party's statement that irregular migrants are entitled to emergency care under provincial legislation is not true in all provinces and territories.

7.3 Regarding the State party's argument that immigration status is not a prohibited ground of discrimination under article 26, the author submits that irregular migrants face widespread discrimination, exclusion, exploitation and various abuses, and that depriving them of health care cannot be justified as a mean of encouraging compliance with immigration laws.

7.4 On 22 August 2015, the author submitted two legal opinions of International Network for Economic, Social and Cultural Rights (The ESCR-Net) and Amnesty International Canada (AI).

[10] See communications No.1234/2003, *P.K v. Canada*, (CCPR/C/89/D/1234/2003), at para 7.6; and No. 1544/2007, *Hamida v. Canada*, (CCPR/C/98/D/1544/2007), at para. 7.3.

7.5 First, the ESCR-Net submits that the narrow characterization by the State party of article 6, 7, and 9(1) is incorrect. The consideration of cases that involve situations of access to health care is not dependant on an explicit right to health, but should be undertaken with reference to all relevant human rights engaged. The right to life, the prohibition of inhuman and degrading treatment or punishment, the right to security of person, and the right to non-discrimination must be fully protected with respect to situations involving access to necessary health care, especially in regard to the most vulnerable groups in society, including undocumented migrants. The Committee has affirmed on multiple occasions that access to health care falls under several rights of the Covenant and that such access must be respected and ensured without discrimination, including on the grounds of immigration status.[11] The ESCR-Net submits that in its recent Concluding Observations on Canada, the Committee called on Canada to "ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status".[12] Similarly, in its 2014 Concluding Observations on the United States, the Committee called on the U.S. to "identify ways to facilitate access to adequate health care, including reproductive health care services, by undocumented immigrants…"[13] The ESCR-Net underscores that the European Court of Human Rights regularly considers health-related situations by reference to Article 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), and 8 (rights to respect for private and family life, home and correspondence), underscoring positive obligations to ensure access to health care in order to protect various human rights, and the right to life in particular.[14]

7.6 The ESCR-Net also submits that the obligations contained in the Covenant extend to all levels of government and that the State party must ensure that where the federal government has assumed responsibility for providing necessary health care to migrants who are ineligible for provincial health care, the federal program complies with the Covenant.

7.7 The ESCR-Net further submits that immigration should be clearly recognized as prohibited ground of discrimination, following the interpretation of the Committee on Economic, Social, and Cultural Rights.[15] Therefore, the ESCR-Net considers that State policy or practice that imposes regularization of immigration status as a requirement for the protection of the right to life does not meet any standard of reasonableness under international human rights law. It submits that State parties ought to consider and apply policies and practices that represent a proportionate response to any legitimate aims that might exist with respect to compliance with immigration laws.

7.8 Second, the legal opinion of Amnesty International Canada (AI) also argues for the admissibility of the complaint. AI notes that the author has exhausted the domestic remedies since leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada

[11] See e.g. communication 1020/2001, *Cabal and Pasini Bertran v. Australia* (CCPR/C/78/D/1020/2002) at para. 7.7. See also Human Rights Committee, Concluding Observations: Zimbabwe, CCPR/C/79/Add.89 (1998), at para 7, and Comments of the Human Rights Committee: Nepal, CCPR/C/79/Add.42 (1995), at para 8.

[12] Human Rights Committee, Concluding Observations: Canada, CCPR/C/CAN/CO/6 (July 2015), at para.12.

[13] Human Rights Committee, Concluding Observations: United States, CCPR/C/USA/CO/4 (24 April 2014), at para.15.

[14] European Court of Human Rights, *Vo v. France*, Application No. 53924/00 (8 July 2004), at para. 88 and 89. See also European Court of Human rights, *Gorgiev v. Former Yugoslav Republic of Macedonia*, Application No. 49382/06 (2012), at para. 43.

[15] Committee on Economic, Social and Cultural Rights. An evaluation of the obligation to take steps to "Maximum of available resources" under an optional protocol to the Covenant (Thirty-eight session, 2007) U.N. Doc E/C.12/2007/1, at paras. 7-8.

was denied, leaving her with no further domestic recourse available. The AI recalls that it is only in the context of an absence of specific claimants who can be individually identified as having had their rights violated that a communication amounts to an *actio popularis* and would therefore be inadmissible under article 1 of the Optional Protocol.

7.9 On the merits, AI submits that the denial of access to necessary health care to irregular migrants amounts to unlawful discrimination, considering that the exclusion of irregular migrants from the IFHP constitutes unequal treatment which is not based on reasonable and objective criteria and therefore cannot be justified. AI underscores that the Supreme Court of Canada has already found that Canada has a positive obligation under section 15 of the Canadian Charter. In the case of *Eldrige v. British Columbia*, the Court stated that "the principle that non-discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field."[16] Regarding the alleged violation of the author's right to life, AI requests the Committee to recognize that Canada's obligations under the Covenant require it to take positive measures to protect the right to life. AI recalls that the Committee's jurisprudence has established that although the Covenant does not contain a self-standing 'right to health', article 6 engages issues of access to health care.[17] AI also recalls that the Committee has found that restricting "access to all basic and life - saving services such as food, health, electricity, water and sanitation" is inconsistent with the right to life under Article 6.[18]

Additional observations by the State party

8.1 On 30 March 2016, the State party reiterates, as stated in its observations of 14 August 2014 and 2 April 2015 that the communication should be declared inadmissible.

8.2 Responding to the author's comments on the emergency care under provincial legislation, the State party recalls that the administration and delivery of health care services is the responsibility of each provincial or territorial government, guided by the *Canada Health Act*. It recalls that provinces and territories fund these services, through public health insurance programs, with the assistance from the federal government in the form of fiscal transfers. The State party argues that health care services include insured primary health care and care in hospitals, and that the provinces and territories also provides some groups with supplementary health benefits not covered by the Health Act, such as prescribing medicine coverage.

8.3 The State party submits that public health care is administered and funded in Ontario through the Ontario Health Insurance Program (OHIP). It recalls that the author inquired about her coverage under OHIP in June 2009, but was told she did not qualify under Ontario's Health Insurance Act as she was not lawfully a resident of Ontario at the time. Under the *Health Insurance Act*, individuals must have a citizenship or immigration status that renders them eligible for publicly-funded health care. The State party notes that many such types of residence are recognized, including permanent residents, eligible applicants for permanent residency, protected persons, and persons with valid work permits issued under the *Immigration and Refugee Protection Act (IRPA)*. The State party submits that foreign nationals, without legal status in Canada, are not eligible for publicly-funded health care.

[16] Supreme Court of Canada, *Eldrige v. British Columbia* (Attorney General), [1997] 3 SCR 624 at para 78.

[17] See communication No. 1020/2001, *Cabal and Pasini Bertran v. Australia*, (CCPR/C/78/D/1020/2001), at para 7.7.

[18] UN Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel, (CCPR/C/ISR/CO/4), at para 12.

8.4 The State party also claims that the author did not seek a formal decision regarding her eligibility for OHIP nor seek judicial review of Ontario's response. The State party also considers that she has failed to challenge the constitutionality of the OHIP regime in Canadian courts. It notes that it is the province that have the responsibility to determine eligibility for publicly-funded health care within Canada's federal system, and that it is thus against this level of government that the author should have sought a domestic remedy.

8.5 The State party recalls that the author has been a permanent resident of Canada since 2013 and has received comprehensive public health insurance sufficient to meet all her medical needs. The State party notes that the regularization of her status in Canada has provided with comprehensive and publicly-funded health care. The State party recalls that the Committee recognized in *Dranichnikov v. Australia*[19] that the granting of a civil status sufficient to provide the author with protection (such as protection visa) rendered the claim moot and inadmissible on this basis.

8.6 The State party notes that the author began to receive publicly-funded health care on 30 April 2013, eight months before she filed her communication with the Committee, on 24 December 2013, recalling the Committee's view in *A.P.L.-V.D.M. v. The Netherlands*[20] that the author "cannot, at the time of submitting the complaint, claim to be a victim of a violation of the Covenant". The State party therefore states that the communication is inadmissible under article 1 of the Optional Protocol.

8.7 The State party maintains that the communication is an *actio popularis* and is therefore inadmissible. The State party recalls that the author, in addition to her individual claim, sought to "ensure that individuals residing in Canada with irregular immigration or citizenship status have access to IFHP coverage for health care". The State party thus notes that this part of the claim relates not to the author, but to other undocumented migrants who may seek access to the IFHP to fund their health care need. The State party therefore underscores that such an allegation lies outside the scope of the Optional Protocol and that the Committee has consistently recognized that "to the extent [an] author argues that [a] scheme as a whole is in breach of the Covenant, [the] claim amounts to an *actio popularis* reaching beyond the circumstances of the author's own case."[21]

8.8 The State party states that the alleged violations, under articles 6, 7 and 9(1) of the Covenant, including the denial of publicly-funded primary health care, failed to fall into the scope of the Covenant. The State party notes the Committee's views on the right to publicly-funded primary or preventive health care stating that "deprivation of life involves a deliberate or otherwise foreseeable and preventable infliction of life-terminating harm or injury that goes beyond mere damage to health, of which the author would be at risk if she did not receive 'timely and appropriate health care and medication'". The State party submits that the author was provided with sufficient publicly-funded emergency and essential health care available to everyone, regardless of civil status or residency. The State party also submits that the availability of emergency and essential health care fulfils Canada's obligations related to the protection of life under article 6(1) of the Covenant.

[19] See communication No. 1291/2004, *Dranichnikov v. Australia*, (CCPR/C/88/D/1291/2004), para 6.3.

[20] See communication No. 478/1991, *A.P.L. - V.D.M. v. The Netherlands* (CCPR/C/48/D/478/1991), para. 6.3.

[21] See communication No. 958/2000, *Jazairi v. Canada* (CCPR/C/82/D/958/2000), para. 7.6; see also Communication No. 1114/2002, *Kavanagh v. Ireland* (CCPR/C/76/D/1114/2002, at para 4.3.

8.9 The State party further states that it has not sought to prevent the author from obtaining health care services at community health centres[22] or elsewhere on a *pro bono* basis. The State party notes that the Federal Court of Appeal noted that the author had access to medical assistance at these centres, after her medical needs surpassed her ability to pay.

8.10 The State party maintains that the interpretation of the right to life cannot extend so far as to impose a positive obligation on States to provide an optimal level of state-funded medical insurance to undocumented migrants. In this regard, the State party relies on the Committee's view in *Linder v. Finland* that the "right to health, as such, is not protected by the provisions of the Covenant".[23] The State party therefore states that the Covenant does not create an obligation to fund primary or preventive health care.

8.11 As regards the alleged violation under article 26, the State party submits that, in allocating public health care funding, it may reasonably differentiate between those with lawful status in the country (whether citizens, permanent residents, asylum seekers or immigrants, *inter alia*) and foreign nationals who have not been lawfully admitted to Canada. The State party recalls the Committee's views that a "differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26".[24] Relying on the case *Oulajin & Kaiss*[25], the State argues its requirement that foreign nationals be lawfully present within Canada before accessing publicly-funded primary health care is both an objective and reasonable criterion, in respect of the principles of non-discrimination and equality before the law found in Article 26 of the Covenant.

8.12 Regarding the merits, the State party recalls that the author received publicly funded emergency health care services and was not prevented from obtaining primary health care from various community organizations, on a *pro bono basis*, or on the basis of private health insurance.

8.13 The State party concludes that there has been no violation of articles 2(1), 2(3)(a), 6, 7, 9(1), or 26 of the Covenant and requests the Committee to declare the author's request for financial compensation inadmissible.

Further submission from the author

9.1 On 26 July 2016, the author objected to Canada's argument that she must have pursued remedies against provincial governments in Canada for her complaint against the federal government in Canada to be admissible. She submits that she challenged the federal government's denial of health care under the IFHP and that this denial as found by the Federal Court has violated her rights of life by subjecting her to significant threats to life and negative long-term health consequences. The author further submits that the exhaustion of domestic remedies requirement in federal states should be applied consistently with the Committee's observation at paragraph 4 of its General Comment 31 on the nature of the general legal obligation imposed on States Parties to the Covenant.[26]

[22] The community health centres are non-profit organizations that provide primary health and health promotion programs to individuals in the community.

[23] See communication No. 1420/2005, *Linder v. Finland*, (CCPR/C/85/D/1420/2005), para.4.3.

[24] See communication No. 180/1984, *Danning v. The Netherlands* (U.N. Doc. CCPR/C/OP/2 at 205 (1990)), para. 13.

[25] See communications Nos. 406/1990 and 426/1990, *Oulajin & Kaiss v. The Netherlands* (CCPR/C/46/D/406/1990 and 426/1990), para 7.3.

[26] In the General Comment (CCPR/C/21/Rev.1/Add. 13), the Committee reminds States parties with a federal structure of the terms of article 50, according to which the Covenant's provision 'shall extend to all parts of federal states without any limitations or exceptions'.

9.2 The author submits that she has solicited the opinion of a group of leading experts in field of constitutional and health law in Canada.[27] These experts are of the opinion that the author reasonably sought a remedy against the federal government, rather than a province, for failure to provide her with health care coverage for emergency and essential health care.

9.3 The author rejects Canada's observation that her communication is moot, as in the case of *Dranichnikov v. Australia*. The author recalls that in that case, the author alleged that her rights under article 6, 7 and 9 of the Covenant would be violated if she were to be deported to Russia. The author notes that, having been granted a protection visa, the Committee found the allegations related to the threat of deportation to be moot, such that there were no longer any threats of deportation to Russia. In this case, the author alleges that she was denied access to health care necessary for the protection of her life and long term health, not that she is under threat of such denial. The author, however, submits that her allegation is analogous to the components of the communication in *Dranichnikov v. Australia*, which the Committee found to be admissible. Although the author was no longer subject to the procedures before the refugee tribunal and her family had been granted a permanent protection visa, the author had been subject to those procedures in the past and the allegation with respect to tribunal procedures was found to be admissible. The author notes that similarly, in the present case, the allegation that her rights under the Covenant were violated in the past is not rendered moot by the fact that changes in her circumstances mean that the impugned policy is no longer applicable to her.

9.4 With regards to the State party's comments on the case *A.P.L-V.D.M. v. The Netherlands*,[28] the author recalls that the Committee's decision relied on the particular fact of the case, in which an impugned restriction on benefits had been abolished, with retroactive effects. In the present case, the author notes that the exclusion of undocumented migrants from access to health care has not been abolished and the violation of her rights under the Covenant has not been remedied.

9.5 The author also rejects the State party's observation that her submission amounts to an *actio popularis*. The author recalls that the Committee held in the case *Jazairi v. Canada* that an "individual must be personally and directly affected by the violations claimed" and that the allegations with respect to the "scheme as a whole" reached "beyond the circumstances of the author's own case". In the present case, the author maintains that she challenges her exclusion from the IFHP, which personally and directly affect her. The author also submits that the discretion provided to the Minister to grant access to the IFHP for individuals without lawful status in Canada was not in effect at the time she was denied. The author further submits that the State party has not indicated that the discretion is exercised according to any criterion related to the protection of life and long term health. Furthermore, the author notes that the two cases in which discretion has been granted suggest that rare exceptions have been made based on particular immigration circumstances rather than on the basis of the need for health care under article 6 of the Covenant.

9.6 The author further rejects the State party's observation that her submission is not compatible with article 6, 7 and 9 of the Covenant. The authors maintains that she does not

[27] The opinion is attached to the communication. As of 3 June 2016, it is signed by: Prof. Y.Y. Brandon Chen, Prof. Martha Jackman, Faculty of Law, University of Ottawa; Prof. Angela Cameron, PhD, Faculty of Law, University of Ottawa; Prof. Jennifer Koshan, Faculty of Law, University of Calgary; Prof. Bruce Ryder, Osgoode Hall Law School, York University; Prof. Margot Young, Allard School of Law, University of British Columbia; Prof. Catherine Dauvergne, Allard School of Law, University of British Columbia; Prof. Sharry Aiken, Faculty of Law, Queen's University; Prof. Constance McIntosh, Schulich School of Law, Dalhousie University.

[28] See fn. 20.

argue that the Covenant includes " a right to publicly-funded and primary health care" but that she alleges a deprivation of her right to life which, in her circumstances, required access to a program that provided coverage of emergency and essential health care. The author thus submits that the main question regarding the compliance with article 6, which the State party does not address, is the finding of the domestic courts that a violation of the right to life is not arbitrary because it was justified as a measure to promote compliance with immigration law.

9.7 As to the State party's comments on the alleged violation of article 26, the author notes that in the case *Danning v. The Netherlands*[29] the differentiation at issue was with respect to differential insurance rates for married and unmarried individuals, which the committee found to be based on reasonable and objective criteria. The author finds that such distinction is not analogous to a refusal of emergency and essential health care on the basis of immigration status, both because the right to life and personal security are at stake and because the ground of the distinction at issue in the present case is recognized as a basis for widespread discrimination and stigmatization in many countries. Although the State party argues that such a differentiation is not intended to stigmatize, relying on the case *Oulajin and Kaiss v. The Netherlands*, the author submits that the distinction at issue in this case between foster children and biological children was entirely different from the nature of the distinction drawn in the present case.[30]

9.8 Finally, the author rejects the State party's observations on the merits of the case. With respect to the comments made by the State party on the publicly-funded emergency health care services, the author notes that she was living in destitution at the time she applied for coverage under IFHP and had no option of paying for health care. In response to Canada's observation that the author received publicly funded emergency health services, she argues that the Federal Court found that she had been denied health care necessary for the protection of her life and long term health, and that she was also billed for health care she received from emergency departments because she did not have IFHP coverage. The author also refers to her attempt to have her application for permanent residency reviewed on humanitarian and compassionate grounds, which were prolonged by the refusal of the Minister of Health to consider the author's request that fees which she could not afford to pay be waived.[31]

Issues and proceedings before the Committee

Consideration of admissibility

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

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee notes the State party's objection to the admissibility of the communication on the ground that the author sought, by way of an *actio popularis*, to challenge the law in order to ensure that individuals residing in Canada with irregular

[29] See communication No. 180/1984, *Danning v. The Netherlands* (U.N. Doc. CCPR/C/OP/2 at 205), paras. 12.4-12.5.

[30] The Committee found no violation of article 26 and noted that « the Child Benefit Act makes no distinction between Dutch nationals and non-nationals, such as migrant workers. » (para. 7.5).

[31] The Minister only agreed to consider this request when ordered to do so by the Federal Court of Appeal.

immigration or citizenship status have access to IFHP health care coverage, and that the author is not a victim of a violation of articles 1 and 2 of the Optional Protocol, as she has been a beneficiary of provincial health care coverage since April 2013. In this regard, the Committee recalls its jurisprudence according to which "a person may claim to be a victim under article 1 of the Optional Protocol only if his or her rights are effectively violated. The concrete application of this condition is a question of degree. However, no person can in the abstract, by way of actio popularis, challenge a law or practice claimed to be contrary to the Covenant".[32]

10.4 The Committee, however, notes the author's submission that her communication indicates how the policy was applied to her as an individual and how it personally and directly affected her from 2006 to 2013, as demonstrated by the findings of the domestic courts including in regard to the admitted consequences that were harmful for her health.[33] In light of its jurisprudence, the Committee considers that, due to its exclusion from the IFHP between 2006 and 2013 and the consequences thereof, the author may claim to be a victim of the alleged violation of her rights under the Covenant in the meaning of article 1 of the Optional Protocol.[34]

10.5 The Committee further notes the State party's objections to the admissibility of the communication on the ground that the author's communication is moot since first of all the health scheme challenged by the author no longer exists, having been modified in 2012 and in 2014, and the regularization of the author's status in Canada allowed her to benefit from full public health care from 2013 onwards. The Committee notes, however, that neither the changes made to the federal program in 2014 nor the regularization of the author's status could retroactively remedy the harm she actually suffered between 2006 and 2013, due to the denial of her access to appropriate health care in relation to her medical condition.[35] Accordingly, the Committee considers that this part of the communication is admissible pursuant to article 3 of the Optional Protocol.

10.6 The Committee notes the State party's contention that the communication should be declared inadmissible because the author has not exhausted available domestic remedies as required by article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence that the author must exhaust, for the purpose of article 5 (2) (b) of the Optional Protocol, all judicial or administrative remedies that offer him a reasonable prospect of redress.[36] The Committee takes note of the State party's objections that the author has failed to seek monetary compensation before domestic courts when she challenged the constitutionality of the IFHP. The author has, however, explained that she exhausted domestic remedies for violation of her rights under the *Canadian Charter of Rights and Freedoms*. She argues that under section 24 (1) of the Canadian Charter, courts may grant remedies to individuals for infringement of the Charter rights which include, in certain circumstances, monetary compensation. The Committee observes the author's assertion that since the Federal Court of Appeal found that the Charter had not been breached, she had no prospect of success of any claims of monetary compensation. It further notes the author's submission that the courts

[32] See Communication No. 35/1978, *Aumeeruddy-Cziffra et al. v. Mauritius* (CCPR/C/12/D/35/1978), para. 9.2.

[33] See Dr. Hwang's observations, supra note 4: "... she has already suffered serious and to some extent irreversible consequences for her health, because she did not have access to proper care, which has resulted in uncontrolled diabetes and hypertension, which have not been treated properly."

[34] See e.g. communications Nos. 1024/2001, *Manuela Sanlés Sanlés v. Spain* (CCPR/C/80/D/1024/2001), para. 6.2., No. 318/1988, *E.P. et al. v. Colombia*, (CCPR/C/39/D/318/1988), para. 8.2., and No. 1632/2007, *Raymond-Jacques Picq v. France*, (CCPR/C/94/D/1632/2007), para. 6.2. See also *Jazairi v. Canada*, para. 7.6.

[35] See *Dranichnikov v. Australia* (CCPR/C/88/D/1291/2004), para. 6.3, and *A.P.L-V.D.M. v. The Netherlands*, para. 6.3.

[36] See communication No. 437/1990, *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

would have had a broad discretion to award appropriate and just remedies, including compensation, if the Federal Court or the Federal Court of Appeal had upheld her allegations.

10.7 The Committee also notes the State party's contention that the administration and provisions of health care services is the responsibility of the government of each province or territory, and that the author should have requested remedies from the Province of Ontario. The State party also points out that the author could have challenged the constitutionality of the Ontario health insurance scheme. At the same time, the Committee notes the State party's explanations (para. 8.3.) that the author did not meet the conditions set out in the Ontario Health Insurance Act because she was not a legal resident in Ontario and therefore had no chance to benefit from this program. The Committee also notes the author's arguments and the opinion of the "Group of Eminent Specialists", composed of nine Canadian law professors, who believe that it was reasonable for the author to seek a remedy at the federal and not at the provincial level. The Committee notes in particular that (a) if health authority is shared between the provincial and the federal level, federal institutions are responsible for the delivery of health care for certain categories of the population, including some categories of foreigners in an irregular situation; (b) federal institutions are in charge of health care for immigrants in detention, rejected asylum seekers awaiting renewal at the border and expelled persons whose renewal has been suspended due to the conditions of detention or insecurity prevailing in their country; and that c) provincial legislation explicitly excludes from its disposition all persons who do not have a right to lawfully reside in Canada and that such exclusion is confirmed by consistent jurisprudence of Canadian courts. As a result, remedies at the provincial level would have protracted the procedure unnecessarily, while the author was looking for an emergency solution. The State party does not explain how such remedies could have been effective in the author's case. Consequently, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

10.8 Furthermore, the Committee notes the State party's assertion that the author's allegations of a violation of articles 2(1), 2(3)(a), 6, 7 and 9(1) should be found incompatible with the Covenant under article 3 of the Optional Protocol.

10.9 Concerning article 6, the Committee notes the State party's argument that the right to life cannot be interpreted as far as to impose on states a positive obligation to provide undocumented migrants with an optimal level of health insurance. The Committee recalls its jurisprudence that the right to health, as such, is not protected by the provisions of the Covenant.[37] However, the author has explained that she does not claim a violation of the right to health, but of her right to life, arguing that the State party failed to fulfil its positive obligation to protect her right to life which, in her particular circumstances, required provision of emergency and essential health care (par. 9.7.) Accordingly, the Committee declares the claims under article 6 admissible.

10.10 The Committee takes note of the claims of the author under article 7 and 9(1) but considers that the author did not provide sufficient information to explain how the denial of access to health care could have exposed her to cruel, inhuman or degrading treatment or could have undermined her enjoyment of rights under article 9(1) of the Covenant. Consequently, the Committee considers that these claims have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

10.11 Concerning the author's claims under article 26, the Committee notes that the State party has not contested the admissibility of these claims, arguing instead that the government has justified its decision to deny health care coverage to undocumented migrants on the basis of the desire to encourage compliance with federal immigration laws. The Committee notes that the Federal government has not denied that it could have provided the author with necessary health care by permitting her, being an undocumented migrant with the need for

[37] See communication No. 1420/2005, *Linder v. Finland*, (CCPR/C/85/D/1420/2005), para.4.3.

urgent medical assistance, to receive coverage for essential health care under the IFHP. Consequently, the part of the complaint referring to article 26 is declared admissible in accordance with article 2 of the Optional Protocol.

10.12 Recalling its jurisprudence that the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol as they can be invoked only in conjunction with other substantive articles of the Covenant,[38] the Committee considers the author's claims under articles 2(1) and 2(3)(a) to be inadmissible under article 3 of the Optional Protocol.

10.13 Accordingly, the Committee declares the author's claims under articles 6 and 26 to be admissible and proceeds to their consideration on the merits.

Consideration of the merits

11.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5(1) of the Optional Protocol.

11.2 Concerning the alleged violation of article 6, the Committee takes note of the author's claim that a) the denial of her access to health care put her life and health at risk as she could not receive an adequate medical treatment corresponding to the seriousness of her health problems, b) her already critical health status deteriorated to a life-threatening status in 2009, and c) the Federal Court and the Federal Court of Appeal agreed with the fact that her life and health were placed at significant risk by the State party's denial of access to health care coverage under the IFHP. In that context, the Committee notes that the author resided in Canada over a period of time, she worked there from 1999 to 2008, and sought to regularize her status in 2005.

11.3 The Committee recalls that in its General Comment No 6, it noted that the right to life has been too often narrowly interpreted and that it cannot properly be understood in a restrictive manner. The protection of this right requires that States adopt positive measures.[39] The Committee considers that the right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Furthermore, the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life. In particular, as a minimum States parties have the obligation to provide access to existing health care services that are reasonably available and accessible, when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life.

11.4 The Committee notes the State party's observations that the author was able to receive publicly funded medical care through access to hospital emergency care and was not prevented from obtaining primary health care from various community organizations, on a *pro bono basis* or on the basis of private health insurance. Due to the provision of such health care, the State party considers that it has fulfilled its obligations relative to the protection of the author's right to life under article 6 (1) of the Covenant. The Committee notes, however, that both the Federal Court and the Federal Court of Appeal have acknowledged that, despite the care she may have received, the author had been exposed to a serious threat to her life and health because she had been excluded from the benefits of the IFHP. The Committee also

[38] See, e.g., communications No. 2343/2014, *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; No. 2202/2012, *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; No. 2195/2012, *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; No. 1887/2009, *Peirano Basso v. Uruguay* (CCPR/C/99/D/1887/2009), para. 9.4; and. No. 1834/2008, *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

[39] General comment No. 6: Article 6 (Right to life), Sixteenth session (1982), para. 5.

notes the medical opinions submitted to this effect in the Federal Court proceedings (para. 2.9).

11.5 In the light of serious implications of the denial of the IFHP health care coverage to the author from July 2009 to April 2013, as evidenced in her communication and reviewed in detail by the Federal Courts, the Committee concludes that the facts before it disclose a violation of the author's rights under article 6.

11.6 The Committee notes the author's claim under article 26 that excluding her from IFHP coverage on the basis of her "immigration status" is not an objective, proportionate or reasonable means of deterring illegal immigration, in particular as her life-threatening health conditions were not taken into account. The Committee also notes the State's party submission that in allocating public health care funding, it may reasonably differentiate between those with legal status in the country, including immigrants, and foreign nationals who have not been lawfully admitted to Canada and that legal residence is a neutral, objective requirement that cannot be considered as a prohibited ground of discrimination.

11.7 The Committee recalls its General Comment No. 18 (1989) on non-discrimination,[40] in which it reaffirmed that article 26 entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations and prohibits discrimination in law or in fact in any field regulated and protected by public authorities. The Committee also recalls that in its General Comment No.15 (1986) on the position of aliens under the Covenant, it stated that the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. While the Covenant does not recognize the right of aliens to enter and reside in the territory of a State party, the Committee also stated that aliens have an "inherent right to life". States therefore cannot make a distinction, for the purposes of respecting and protecting the right to life, between regular and irregular migrants.[41] More generally, the Committee also recalls that not every differentiation based on the grounds listed in article 26 amounts to discrimination, as long as it is based on reasonable and objective criteria,[42] in pursuit of an aim that is legitimate under the Covenant.[43]

11.8 The Committee considers that in the particular circumstances of the case where, as alleged by the author, recognized by the domestic courts, and not contested by the State party, the exclusion of the author from the IFHP care could result in the author's loss of life or the irreversible negative consequences for the author's health, the distinction drawn by the State party, for the purpose of admission to IFHP, between those having legal status in the country and those who have not been fully admitted to Canada, was not based on a reasonable and objective criteria, and therefore constituted discrimination under article 26.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee reveal violations by Canada of articles 6 and 26.

---

[40] General comment No. 18: Non-discrimination, Thirty-seventh session (1989), para. 1.

[41] See also Inter-American Court of Human Rights, Advisory opinion AO-18/03, 17 September 2003, *Juridical conditions and rights of undocumented migrants*.

[42] See, e.g., communication No. 172/1984, *Broeks v. the Netherlands* (CCPR/C/29/D/172/1984), para. 13; and communication No. 182/1984, *Zwaan-de Vries v. the Netherlands* (CCPR/C/29/D/182/1984), para. 13.

[43] See, e.g., communication No. 1314/2004, *O'Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.

13. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to persons whose rights recognized by the Covenant have been violated. Accordingly, in the present case, the State party is obliged in particular to provide the author with adequate compensation for the harm she suffered. The State party is also under an obligation to take steps to prevent similar violations in the future, including reviewing its national legislation to ensure that irregular migrants have access to essential health care to prevent a reasonably foreseeable risk that can result in loss of life.

14. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, to have them translated into the official languages of the State party and to ensure that they are widely disseminated.