

NETHERLANDS

Follow-up - Jurisprudence Action by Treaty Bodies

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

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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Netherlands: Four views finding violations; satisfactory follow-up replies received from the State party in all four cases.

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431. ... a number of States parties have indicated that compensatory payments to the victim(s) were made ex gratia, notably where the domestic legal system does not provide for compensation in a different manner, or that a remedy was offered ex gratia. That, for example, was the argument of the Government of the Netherlands in its follow-up replies on the Committee's views in respect of communications No. 305/1988 (Van Alphen v. Netherlands) and No. 453/1991 (Coeriel v. Netherlands).

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

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Netherlands: Four Views finding violations: 172/1984 - Broeks (1987 Report); 18/ State party's follow-up report, dated 23 February 1995, unpublished; 182/1984 - Zwaan de Vries (1987 Report); 18/ State party's follow-up reply was not published; 305/1988 - van Alphen (1990 Report); 14/ for State party's follow-up reply dated 15 May 1991, see 1991 Report, 19/ paras. 707 and 708; 453/1991 - Coeriel & Aurick (1995 Report); 16/ State party's follow-up reply dated 28 March 1995, unpublished.

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

16/ Ibid., Fiftieth Session, Supplement No. 40 (A/50/40).

18/ Ibid., Forty-second Session, Supplement No. 40 (A/42/40).

19/ Ibid., Forty-sixth Session, Supplement No. 40 (A/46/40).

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

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Netherlands: Four Views finding violations: 172/1984 - Broeks (1987 Report (A/42/40)); State party's follow-up reply, dated 23 February 1995, unpublished; 182/1984 - Zwaan de Vries (1987 Report); State party's follow-up reply was not published; 305/1988 -van Alphen (1990 Report (A/45/40)); for State party's follow-up reply, dated 15 May 1991, see 1991 Report (A/46/40), paras. 707 and 708; 453/1991 - Coeriel and Aurick (1995 Report (A/50/40)); State party's follow-up reply, dated 28 March 1995, unpublished.

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

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Netherlands: Four Views finding violations: 172/1984 - Broeks (A/42/40); State party's follow-up reply, dated 23 February 1995, unpublished; 182/1984 - Zwaan-de Vries (A/42/40); State party's follow-up reply, unpublished; 305/1988 - van Alphen (A/45/40); for State party's follow-up reply, see A/46/40, paras. 707 and 708; 453/1991 - Coeriel (A/50/40); State party's follow-up reply, dated 28 March 1995, unpublished.

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

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Netherlands: Five Views finding violations: 172/1984 - Broeks (A/42/40); the State party's follow-up reply, dated 23 February 1995, unpublished; 182/1984 - Zwaan-de Vries (A/42/40); State party's follow-up reply, unpublished; 305/1988 - van Alphen (A/45/40); for the State party's follow-up reply, see A/46/40; paras. 707 and 708; 453/1991 - Coeriel (A/50/40); the State party's follow-up reply, dated 28 March 1995, unpublished; 786/1997 - Vos (A/54/40); for follow-up reply, see below.

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

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Netherlands. By submission of 25 October 1999 concerning case No. 786/1997 - Vos, the Government of the Netherlands informed the Committee that it had published the Committee's Views in the Gazette. However, at the same time it challenged the Committee's Views that the author had been a victim of discrimination and informed the Committee that it would not implement its recommendation. After having received the Government's reply, the Committee decided to organize a meeting with the State party's representative. The meeting has not yet taken place.

Chapter IV. Follow-up Activities under the Optional Protocol

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

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Netherlands: Six Views finding violations: 172/1984 - Broeks (A/42/40); follow-up reply, dated 23 February 1995, unpublished; 182/1984 - Zwaan-de Vries (A/42/40); follow-up reply, unpublished; 305/1988 - van Alphen (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708; 453/1991 - Coeriel (A/50/40); follow-up reply, dated 28 March 1995, unpublished; 786/1997 - Vos (A/54/40); for follow-up reply, see A/55/40, paragraph 612; 846/1999 - Jansen-Gielen (annex X, sect. N); deadline for follow-up reply not yet expired.

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

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191. Netherlands: By submission of 25 October 1999 concerning case No. 786/1997 - Vos, the Government of the Netherlands informed the Committee that it had published the Committee's Views in the Official Gazette. However, at the same time it challenged the Committee's Views that the author had been a victim of discrimination and informed the Committee that it would not implement its recommendation. By note verbale, dated 9 November 2000, the State party informed the Committee that it was prepared to provide the author with compensation. However, the State party still challenges the Committee's Views. In a letter dated 12 November 1999 the author criticized the State party's response and asked for assistance. The Special Rapporteur met with a representative of the Netherlands during the seventieth session of the Committee, on 19 October 2000. By note verbale dated 9 November 2000, the State party informed the Committee that it was granting compensation to the author for his costs and expenses incurred in the proceedings before the Committee.

Chapter VI. Follow-up activities under the optional protocol

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

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Netherlands: Views in six cases with findings of violations:

172/1984 - Broeks (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - Zwaan-de Vries (A/42/40); follow-up reply, unpublished;

305/1988 - van Alphen (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - Coeriel (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - Vos (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - Jansen-Gielen (A/56/40); for follow-up reply, see paragraph [245] below.

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

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

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their

investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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245. Netherlands: With regard to case No. 846/1999 - Jansen-Gielen (A/56/40), the State party informed the Committee by submission of 10 September 2001 that it had paid the author ex gratia f. 5,000, including any costs of psychiatric reports provided in the national proceedings, and a further f. 3,500 by way of reimbursement for legal assistance. As to the systemic issue, the entry into force on 1 January 1994 of the General Administrative Law Act prevented any repetition of future similar violations.

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CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Netherlands: Views in six cases with findings of violations:

172/1984 - *Broeks* (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - *Zwaan-de Vries* (A/42/40); follow-up reply, unpublished;

305/1988 - *van Alphen* (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - *Coeriel* (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - *Vos* (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - *Jansen-Gielen* (A/56/40); for follow-up reply, see A/57/40, paragraph 245.

Notes

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

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

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

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

Follow-up progress report

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

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NETHERLANDS:

Jansen-Gielen, Case no. 846/1999, Views adopted on 3 April 2001

Violations found: Article 14, paragraph 1

Issues of case: Inequality of arms in judicial proceedings

Remedy recommended: "An effective remedy" to the authors.

Deadline for State party follow-up information: 28 August 2001

Follow-up information received from State party: By submission of 10 September 2001, the State party informed the Committee that it had paid the author ex gratia 5,000 guilders, including any costs of psychiatric reports provided in the national proceedings, and a further 3,500 guilders by way of reimbursement for legal assistance. As to the systemic issue, the entry into force of the General Administrative Law Act on 1 January 1994 prevents recurrence of future similar violations.

Follow-up information received from author: None

Special Rapporteur's recommendations: No further consideration under the follow-up procedure required, as the State party has complied with the Committee's recommendations.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Netherlands: Views in seven cases with findings of violations:

172/1984 - *Broeks* (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - *Zwaan-de Vries* (A/42/40); follow-up reply, unpublished;

305/1988 - *van Alphen* (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - *Coeriel* (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - *Vos* (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - *Jansen-Gielen* (A/56/40); for follow-up reply, see A/57/40, paragraph 245. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered further under the follow-up procedure as the State party had complied with the Committee's Views;

976/2001 - *Derksen* (annex IX); follow-up not yet due.

Notes

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

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

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Netherlands (7)	172/1984, <i>Broeks</i> A/42/40	X A/59/40*	X			
	*Note: The information was provided on 23 February 1995, but was unpublished (see A/59/40). The State party indicated that it had retroactively amended its legislation, thereby granting the author a satisfactory remedy. It referred to two cases subsequently considered by the Committee in which no violations of the Covenant were found, namely <i>Lei-van de Meer</i> (478/1991) and <i>Cavalcanti Araujo-Jongen</i> (418/1990), as the alleged inconsistency and/or deficiency had been corrected by the retrospective amendment embodied in the Act of 6 June 1991. Thus, as the situation was the same in the <i>Broeks</i> case the amendment embodied in the Act of 6 June 1991 afforded the author sufficient satisfaction.					
	182/1984, <i>Zwaan-de Vries</i> A/42/40	X A/59/40*	X			
	*Note: According to this report, information was provided on 28 December 1990, but was unpublished. It appears from the Follow-up file that in this response author's counsel indicated that the author had received her benefits covering the two years she was unemployed.					
	305/1988, <i>van Alphen</i> A/45/40	X A/46/40	X			
	453/1991, <i>Coeriel</i> A/50/40	X A/59/40*	X			
	*Note: According to this report, information was provided on 28 March 1995, but was unpublished. The State party submitted that although its legislation and policy in the field of the changing of names offer sufficient guarantees to prevent future violations of article 17 of the Covenant, out of respect for the Committee's opinion, the Government decided to ask the authors whether they still wished to change their names in line with their applications and if so, permission would be granted for such a change to be effected without costs.					
	786/1997, <i>Vos</i> A/54/40	X A/55/40		X		X
	846/1999, <i>Jansen-Gielen</i> A/56/40	X A/57/40	X A/59/40			
	976/2001, <i>Derksen</i> A/59/40	X A/60/40				X

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

CCPR, A/60/40 vol. II (2005)

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Annex VII

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

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

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<i>State party</i>	<i>NETHERLANDS</i>
<i>Case</i>	Derksen, 976/2001
<i>Views adopted on</i>	1 April 2004
<i>Issues and violations found</i>	Discrimination in provision for orphans - article 26.
<i>Remedy recommended</i>	The State party is under an obligation to provide half orphans' benefits in respect of Kaya Marcelle Bakker or an equivalent remedy.
<i>Due date for State party response</i>	24 August 2004
<i>Date of reply</i>	19 August 2004
<i>State party response</i>	While recognizing the importance of the individual complaints procedure and the seriousness of the Committee's decisions, the State party challenges the decision in this case. It fails to see how there can be unequal treatment in a situation in which none of the groups compared can derive entitlements from the legislation concerned. No half-orphans can claim entitlement in their own right to surviving dependents' benefit, not even those who are born from a relationship, marital or otherwise, which ended after 1 July 1996 with the death of one of the parents. According to the State party, one can only talk of a victim of direct or indirect discrimination, when someone is denied certain rights that are accorded to others in the same situation.

In the case at issue, this would be the surviving parent, as it is the surviving parent to whom the benefit is awarded, and who may dispose of it entirely as he or she sees fit. Although the additional benefit is awarded to help pay for the maintenance of minor children, the State does not possess any instrument to guarantee or verify that it is used in this way. However, precisely in relation to the person entitled to benefit, the surviving parent, the Committee has determined that the failure to apply the new legislation to old cases does not amount to discrimination within the meaning of article 26. The State party is therefore unable to follow the reasoning that led the Committee to reach a different conclusion in relation to benefit for the maintenance of the half-orphan. The State party refers to the judgement of the European Court of Human Rights in the comparable case of *Van Bouwhuisen and Schuring v. The Netherlands*, which dealt with half-orphans' benefit under the old legislation. The Court pointed out that benefit for the half-orphans had been refused not because the child had been born out of wedlock, but because the AWW did not provide for entitlement to benefit for half-orphans. The State party concludes from this that denying someone who is excluded by definition from entitlement to benefit under the terms of the legislation concerned cannot be classified as discrimination.

Author's response

On 3 December 2004, author's counsel expresses his disagreement with the State party's view. He states that the decision of the ECHR, cited by the State party does not support its view. The Court did not consider the substance of the complaint as the half orphan in question could not make an independent claim to the half-orphan's pension - it being granted to the surviving spouse. The Court found that the half orphan could not invoke article 1 of the Protocol number 1 of the Convention, as article 14 has no independent existence since it has effect only in relation to the "enjoyment of rights safeguarded by those provisions". Article 26 of the Covenant is wider and thus the preliminary condition which was at issue in the case before the ECHR was not at issue in this case.

Counsel submits that it is not at issue that the half-orphan's pension is provided on behalf of the half orphan and refers to a number of undisputed quotes from the history of the act.

It is logical, in counsel's view, that benefits for children in the form of children's allowance or a half-orphan's pension, are granted to the caregiving parent, as this (mostly) involves young children who do

not have legal capacity. It is self-evident that such benefits are in the children's interest and that these children are entitled to the benefits. These benefits enable the child's caregiving parent, the dependent of the deceased parent of the child, to acquire extra financial resources to be spent on the child.

Counsel regrets the State party's disregard for the Committee's Views and requests the Committee to urge the State party to comply with the remedy included therein.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up

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

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

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

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
...						
Netherlands (8)	172/1984, <i>Broeks</i> A/42/40	X A/59/40*	X			
<p><i>*Note:</i> According to this report, information was provided on 23 February 1995 (unpublished). The State party indicated that it had retroactively amended its legislation thereby granting the author a satisfactory remedy. It referred to two cases subsequently considered by the Committee in which no violations of the Covenant were found, namely <i>Lei-van de Meer</i> (478/1991) and <i>Cavalcanti Araujo-Jongen</i> (418/1990), as the alleged inconsistency and/or deficiency had been corrected by the retrospective amendment embodied in the Act of 6 June 1991. Thus, as the situation was the same in the <i>Broeks</i> case the amendment embodied in the Act of 6 June 1991 afforded the author sufficient satisfaction.</p>						
	182/1984, <i>Zwaan-de Vries</i> A/42/40	X A/59/40*	X			
<p><i>*Note:</i> According to this report, information was provided on 28 December 1990, but was unpublished. It appears from the Follow-up file that in this response author's counsel indicated that the author had received her benefits covering the two years she was unemployed.</p>						
	305/1988, <i>van Alphen</i> A/45/40	X A/46/40	X			

453/1991, <i>Coeriel</i> A/50/40	X A/59/40*	X			
<p>*<i>Note.</i> According to this report, information was provided on 28 March 1995 (unpublished). The State party submitted that although its legislation and policy in the field of the changing of names offer sufficient guarantees to prevent future violations of article 17 of the Covenant, out of respect for the Committee's Views, the Government decided to ask the authors whether they still wish to change their names in line with their applications and if so permission would be granted for such a change to be effected without costs.</p>					
786/1997, <i>Vos</i> A/54/40	X A/55/40		X		X
846/1999, <i>Jansen-Gielen</i> A/56/40	X A/57/40	X A/59/40			
976/2001, <i>Derksen</i> A/59/40	X A/60/40				X
1238/2003, <i>Jongenburger Veerman</i> A/61/40				X	X
...					

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

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

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

<i>State party and number of cases with violation</i> ...	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
Netherlands (8)	172/1984, <i>Broeks</i> A/42/40	X A/59/40*	X			
<p><i>*Note:</i> According to this report, information was provided on 23 February 1995 (unpublished). The State party indicated that it had retroactively amended its legislation thereby granting the author a satisfactory remedy. It referred to two cases subsequently considered by the Committee in which no violations of the Covenant were found, namely <i>Lei-van de Meer</i> (478/1991) and <i>Cavalcanti Araujo-Jongen</i> (418/1990), as the alleged inconsistency and/or deficiency had been corrected by the retrospective amendment embodied in the Act of 6 June 1991. Thus, as the situation was the same in the <i>Broeks</i> case the amendment embodied in the Act of 6 June 1991 afforded the author sufficient satisfaction.</p>						
	182/1984, <i>Zwaan-de Vries</i> A/42/40	X A/59/40*	X			
<p><i>*Note:</i> According to this report, information was provided on 28 December 1990, but was unpublished. It appears from the Follow-up file that in this response author's counsel indicated that the author had received her benefits covering the two years she was unemployed.</p>						
	305/1988, <i>van Alphen</i> A/45/40	X A/46/40	X			
	453/1991, <i>Coeriel</i> A/50/40	X A/59/40*	X			
<p><i>*Note:</i> According to this report, information was provided on 28 March 1995 (unpublished). The State party submitted that although its legislation and policy in the field of the changing of names offered sufficient guarantees to prevent future violations of article 17 of the Covenant, out of respect for the Committee's Views, the Government had decided to ask the authors whether they still wished to change their names in line with their applications and if so permission would be granted for such a change to be effected without costs.</p>						

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	786/1997, <i>Vos</i> A/54/40	X A/55/40		X		X
	846/1999, <i>Jansen-Gielen</i> A/56/40	X A/57/40	X A/59/40			
	976/2001, <i>Derksen</i> A/59/40	X A/60/40				X
	1238/2003, <i>Jongenburger Veerman</i> A/61/40				X	X
...						

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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

...						
Netherlands (8)	172/1984, <i>Broeks</i> A/42/40	X A/59/40*	X			
	*Note. According to this report, information was provided on 23 February 1995 (unpublished). The State party indicated that it had retroactively amended its legislation, thereby granting the author a satisfactory remedy. It referred to two cases subsequently considered by the Committee in which no violations of the Covenant were found, namely <i>Lei-van de Meer</i> (No. 478/1991) and <i>Cavalcanti Araujo-Jongen</i> (No. 418/1990), as the alleged inconsistency and/or deficiency had been corrected by the retrospective amendment embodied in the Act of 6 June 1991. Thus, as the situation was the same in the <i>Broeks</i> case, the amendment embodied in the Act of 6 June 1991 afforded the author sufficient satisfaction.					
	182/1984, <i>Zwaan-de Vries</i> A/42/40	X A/59/40*	X			
	*Note. According to this report, information was provided on 28 December 1990 (unpublished). It appears from the follow-up file that, in this response, the author's counsel indicated that the author had received her benefits covering the two years she was unemployed.					
	305/1988, <i>van Alphen</i> A/45/40	X A/46/40	X			
	453/1991, <i>Coeriel</i> A/50/40	X A/59/40*	X			
*Note. According to this report, information was provided on 28 March 1995 (unpublished). The State party submitted that, although its legislation and policy in the field of the changing of names offer sufficient guarantees to prevent future violations of article 17 of the Covenant, out of respect for the Committee's Views, the Government decided to ask the authors whether they still wish to change their names in line with their applications and, if so, permission would be granted for such a change to be effected without costs.						

Netherlands (<i>cont'd</i>)	786/1997, <i>Vos</i> A/54/40	X A/55/40		X		X
	846/1999, <i>Jansen-Gielen</i> A/56/40	X A/57/40	X A/59/40			
	976/2001, <i>Derksen</i> A/59/40	X A/60/40				X
	1238/2003, <i>Jongenburger Veerman</i> A/61/40				X	X
...						

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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

...						
Netherlands (8)	172/1984, <i>Broeks</i> A/42/40	X A/59/40*	X			
	<p>*<i>Note.</i> According to this report, information was provided on 23 February 1995 (unpublished). The State party indicated that it had retroactively amended its legislation, thereby granting the author a satisfactory remedy. It referred to two cases subsequently considered by the Committee in which no violations of the Covenant were found, namely <i>Lei-van de Meer</i> (No. 478/1991) and <i>Cavalcanti Araujo-Jongen</i> (No. 418/1990), as the alleged inconsistency and/or deficiency had been corrected by the retrospective amendment embodied in the Act of 6 June 1991. Thus, as the situation was the same in the <i>Broeks</i> case, the amendment embodied in the Act of 6 June 1991 afforded the author sufficient satisfaction.</p>					
	182/1984, <i>Zwaan-de Vries</i> A/42/40	X A/59/40*	X			
	<p>*<i>Note.</i> According to this report, information was provided on 28 December 1990 (unpublished). It appears from the follow-up file that, in this response, the author's counsel indicated that the author had received her benefits covering the two years she was unemployed.</p>					
305/1988, <i>van Alphen</i> A/45/40	X A/46/40	X				

453/1991, <i>Coeriel</i>	A/50/40	X	A/59/40*	X			
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**Note.* According to this report, information was provided on 28 March 1995 (unpublished). The State party submitted that, although its legislation and policy in the field of the changing of names offer sufficient guarantees to prevent future violations of article 17 of the Covenant, out of respect for the Committee's Views, the Government decided to ask the authors whether they still wish to change their names in line with their applications and, if so, permission would be granted for such a change to be effected without costs.

	786/1997, <i>Vos</i> A/54/40	X A/55/40		X		X
Netherlands (<i>cont'd</i>)	846/1999, <i>Jansen-Gielen</i> A/56/40	X A/57/40	X A/59/40			
	976/2001, <i>Derksen</i> A/59/40	X A/60/40				X
	1238/2003, <i>Jongenburger Veerman</i> A/61/40				X	X
...						

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...

Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

<i>State party</i>	<i>Netherlands</i>
<i>Case</i>	<i>A. K. H. A., 1542/2007</i>
<i>Views adopted on</i>	39645
<i>Issues and violations found</i>	Review of conviction and sentence - article 14, paragraph 5
<i>Remedy recommended</i>	Effective remedy, including the review of his appeal before the Court of Appeals and compensation.
<i>Due date for State party response</i>	39873
<i>Date of State party response</i>	27 February 2009 and 28 May 2009
<i>State party response</i>	On 27 February 2009, the State party submitted that upon a review of the relevant law, the Supreme Court concluded that all the Court of Appeal's decisions on denial of leave to appeal, according to the Criminal Procedure Act, section 231, subsection 2, shall include reasons for its decision. In this regard, in its judgement of 17 July 2008, the Supreme Court made reference to the Committee's Views. In addition, the Ministry of Justice has stated that it will take the initiative to amend the Criminal Procedure Act, so that the applicable requirement for written reasons in such circumstances is expressed in the wording of the

Act. In addition, the State party submitted that it published the Committee's Views on the Court Administrations' homepage and the government page and that the Views were also referred to several times in the Norwegian media.

In December 2008, the Ministry of Justice paid a total of NOK 194,100 to the plaintiff's counsel, which partly covers the counsel's work on the case before the Committee (NOK 184,100) and partly translation expenses (NOK 10,000). Following a request for additional compensation from the author for damages for non-economic loss, on 28 October 2008 the Attorney General informed the author that the claim for additional compensation cannot be settled until the author's application for leave to appeal has been tried by the courts once again.

On 27 December 2008, the Norwegian Criminal Cases Review Commission decided to reopen the Appeals Selection Committee of the Supreme Court's decision 19 July 2006 in the author's case. In its reasons for re-opening the case, the Review Commission refers to section 391 No. 2 b of the Criminal Procedure Act, which sets out the circumstances in which a case may be reopened following a decision by the Human Rights Committee.

Author's comments

On 24 March 2009, the author welcomed the measures taken so far by the State party, however submitted that he has not been awarded full compensation in accordance with the Committee's decision. According to the author, the Ministry of Justice and the Attorney General have stated that his claim for compensation cannot be settled until his application reopening his leave to appeal has been heard in court. Moreover, the Attorney General claims that compensation will only be awarded if the author is in fact given leave to appeal and the conviction against him is changed by the Court of Appeal. The author considers the Attorney General's view as disregard for the State party's obligations under the Covenant and that he should be entitled to compensation for the human rights violation in itself, irrespective of the outcome of his application for review. He submits that the Committee did not qualify the obligation to provide compensation with any such conditions and that compensation should be awarded to remedy a violation which he has already

been made a victim of.

The author also disagrees with another of the Attorney General's arguments, that compensation will only be awarded as provided for under Norwegian law, and only if the criteria under Norwegian law are fulfilled. According to the author, if the Committee had wished to tie the entitlement to compensation to the Norwegian rules concerning damages, the Committee would have expressed itself differently. For example, it would have requested "compensation according to law". In the author's view, if the Attorney General's argument was accepted it would mean that compensation for human rights violations as ordered by the Committee would become essentially futile. Any State could simply avoid its obligation by way of its national laws.

Finally, the author provided detailed information of the losses he has suffered to date as a result of the judgement and prison sentence, inter alia: the loss of his house; indebtedness to the amount of approximately 437,500 euros; is currently a disabled pensioner; the bank refusal to disburse his credit insurance and the town treasurer extracts tax payments as deductions from his disability pension. He is also threatened with bankruptcy.

State party's further comments

On 28 May 2009, the State party refutes the author's allegations that it has failed to adequately follow-up on the Views and reiterates the measures already taken by the State party. It states that since 19 December 2008, the Norwegian Court of Appeal and the Supreme Court have given reasons for their denials of leave to appeal and that the proposal for an amendment of the Criminal Procedure Act will be sent for public hearing in May 2009.

As to the author's case, the State party states that on 26 January 2009, the Appeal Committee of the Supreme Court decided that the decisions of the Borgarting Appeal Court of 1 June 2006, to deny the appeal from the author in the criminal case against him, should be quashed, and that his appeal shall be tried again by one of the other courts of appeal, Gulating Appeal Court. The Government expects the decision soon.

In the State party's view, the economic losses that the author claims to be caused "by the human rights violations" , were not caused by the Borgarting Appeals Court's failure to give reasons for its denial of appeal, but rather by the fact that the author was convicted by the districted court and has served his time in prison. All losses described in counsel's letter of 24 March 2009 appear to flow from his conviction as such. Whether this conviction was correct or erroneous is till a pending issue, but will, in due course, be decided by the Gulating Appeal Court. If his is acquitted then he has been subject to unwarranted prosecution, at which point he will have the right to both pecuniary and non-pecuniary losses. If his conviction is confirmed, neither it nor his time in prison has been unwarranted. However, even so, he may file a claim for compensation for pecuniary and/or non-pecuniary losses pursuant to a special rule in the Criminal Procedure Act. The State party makes reference to the Committee's general comment No. 31 (2004) for the proposition that remedies do not have to be in the form of pecuniary compensation.

Author's further comments

On 2 June 2009, the author reiterates that the State party's decision to date to pay compensation only for legal expenses does not fulfil the Committee's requirement for "compensation" set out in its Views. The claims for compensation the author may make under the Criminal Procedure Act are tied to a different set of circumstances and do not relate to the violation of his rights under article 14 of the Covenant.

Committee's Decision

The follow-up dialogue is ongoing.

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