



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

DECISION

Communication No. 1379/2005

Submitted by: Peter Michael Queenan (not represented by
counsel)

Alleged victim: Canadian unborn children

State party: Canada

Date of communication: 11 November 2004 (initial submission)

Date of decision: 26 July 2005

Subject matter: abortion

Procedural issues: action popularis

Substantive issues: recognition as a person before the law, discrimination on grounds
of birth status, equality before the law, right to life, inhuman treatment

Articles of the Covenant: 16, 26, 6 and 7

Articles of the Optional Protocol: 1

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eighty-fourth session

concerning

Communication No. 1379/2005*

Submitted by: Peter Michael Queenan (not represented by
counsel)

Alleged victim: Canadian unborn children

State party: Canada

Date of communication: 11 November 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 July 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication dated 11 November 2004 is Peter Michael Queenan, a Canadian-South African citizen, born in 1957 in South Africa and resident of Canada. He submits his petition on behalf of Canadian unborn children and claims that they are victims of violations by Canada of articles 16, 26, 6 and 7 of the International Covenant on Civil and Political Rights (the Covenant). He is not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text of an individual opinion signed by Committee member Ms. Ruth Wedgwood is appended to the present document.

Factual background

2.1 The author, as a Canadian citizen, is presenting his communication on behalf of Canadian unborn children, because they cannot present the complaint themselves. According to the author, the practice of abortion is openly facilitated and sponsored by the State party. He claims that this practice is the consequence of the fact that unborn children do not benefit from legal protection and are denied the right to life by the State.

2.2 The author submits a copy of part VIII, section 223 of the Canadian Criminal Code, which states that a child becomes a human being when born, and argues that an unborn human's life may be freely taken as long as it is done while the child is in the womb of its mother.

2.3 The author further submits statistics from 1987 to 2001, published by Statistics Canada on the official Canadian Government website, and points out that approximately 100,000 lives are currently taken every year by doctors in the State party.

2.4 The author argues that although abortion is a social and moral issue, it is also a human rights issue which affects both the mother and child, who should have the same fundamental rights. He further claims that popular acceptance or belief cannot supersede human rights, and that the fact that there is a modern consensus reflecting the view that abortion is an acceptable practice does not make it tolerable. He adds that polls in the State party indicate that most people want women to have the choice of abortion, but that the issue of human rights is not up to the outcome of polls and that the victims are not being included in the sample being polled.

The complaint

3.1 The author alleges a violation of article 16 of the Covenant in that the State party does not recognise unborn children as persons before the law, because section 223(1) of the Criminal Code of Canada limits the definition of human beings to post-birth children.

3.2 The author claims that unborn children are victims of a violation of article 26 of the Covenant, as the State party does not treat unborn children as equal before the law, and does not provide them with legal protection. He points out that Article 26 of the Covenant is by nature intended to prevent all forms of discrimination against any human, without distinction of any kind, including distinction such as "birth or other status", and that it covers all of humankind, as can be implied from the use of words like "all persons", "everyone", "all members of the human family", "human beings" and "all individuals". He opines that the only non-discriminatory definition of "human" or "person" includes all living members of the human species, and that a line cannot be drawn to identify when an embryo becomes human in terms of human rights.

3.3 The author further alleges that the State party has violated article 6 of the Covenant by legalising, facilitating and funding the process by which an unborn human's life can be taken. He emphasises that article 6 protects the right to life of "every human being", and that article 223(2) of the Criminal Code, which does not recognise homicide performed on unborn humans, does not protect unborn humans' right to life. The author also refers to article 6, paragraph 5, which provides that the death penalty shall not be carried out on pregnant women. He adds that the Convention on the Rights of the Child, ratified by the State party, which defines a child as "every human being below the age of eighteen years unless under the law applicable to the child,

majority is attained earlier”, does not mention a lower limit, such as post-birth. The preamble of the same convention refers to the Declaration of the Rights of the Child, according to which “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. The author contends that the Covenant would not contradict, disagree with or be more discriminatory with regard to children than the Convention on the Rights of the Child.

3.4 The author finally claims a violation of article 7 of the Covenant in that it allows abortion which he defines as a cruel, tortuous and inhuman practice. He emphasises that the procedures of abortion are not regulated by the State.

3.5 With regard to exhaustion of domestic remedies, the author claims that these are ineffective, as numerous steps have been taken the last thirty years to have the rights of unborn recognised in Canada. He also considers that the State party has been given a chance to address this issue and has not shown any interest in it. The author argues that an appeal attempting to have the right to life and legal protection given to the unborn was brought to the Supreme Court and dismissed in March 1989. Petitions are regularly being submitted to the State, which has not taken any action to recognise the right to life of unborn humans. He finally points out that in recent years, two Private Member’s Bills have been submitted to Parliament for recognition of the rights of the unborn, and have been refused.

3.6 The author states that the complaint has not been submitted to any other procedure of international investigation or settlement.

3.7 In an additional submission dated 22 April 2005, the author claims that his petition does not constitute an *actio popularis*, because the victims cannot submit the complaint themselves. The author believes that any citizen of a State party should have the right to appeal to the Committee regarding gross violations being performed by that State. He claims that limiting this right to those who are directly involved or related or associated, would leave the door open for States to perform injustices as long as the State could restrict access to or association with the victims. He thus feels justified, as a citizen of the State party, to represent the victims in his complaint.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes that the author does not claim that he is a victim of the alleged violations of the Covenant by the State party. The author states that he is submitting this communication on behalf of all unborn children in the State party in general. The Committee notes that, in accordance with Article 1 of the Optional Protocol, communications must be submitted by or on behalf of “individuals” who claim “that any of their rights enumerated under the Covenant” have been violated. The Committee considers that in the absence of specific

claimants who can be individually identified, the author's communication amounts to an *actio popularis* and is therefore inadmissible under article 1 of the Optional Protocol.

5. Accordingly, the Committee decides:

- (a) That the communication is inadmissible under article 1 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

APPENDIX

Individual opinion by Committee member Ms. Ruth Wedgwood

Under the complaint procedure of the First Optional Protocol of the International Covenant on Civil and Political Rights, the Human Rights Committee is empowered to receive communications from particular individuals who have suffered violations of the Covenant through state action. But, even in compelling circumstances, the Committee's procedural rules have not permitted the Committee to engage in a declaratory judgment, or to accept petitions on behalf of a general class of individuals.

Unlike some other human rights procedures, such petitions are considered to be *actio popularis* that fall outside the limited terms of the Optional Protocol. See Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (2nd revised edition 2005), at pp. 829-837.

The present petition, filed against Canada by author Peter Queenan on behalf of Canadian unborn children, alleges violations of the right to life under Article 6 of the Covenant through state funding of abortions, and other violations. The Committee has concluded that it lacks jurisdiction to proceed upon such a complaint because it is brought as a general action on behalf of an entire class of individuals. This procedural rule does not prejudge any of the moral or legal issues that the author of the complaint would like to raise.

[Signed] Ms. Ruth Wedgwood

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
