1) Reference Details

Jurisdiction: UN Human Rights Committee, Eighty-fourth sessions
Date of Decision: 26 July 2005

2) Facts

The author, as a Canadian citizen, was presented his communication on behalf of Canadian unborn children. According to the author, the practice of abortion is openly facilitated and sponsored by the State. He claimed 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.

The author submitted a copy of Part VIII, s. 223 of the Canadian Criminal Code, which states that a child became a human being when born, and argued 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.

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

The author argued 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 claimed that popular acceptance or belief could not 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 added that polls in Canada indicated 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.

3) Law

*International Law*

- Article 6 of the International Covenant on Civil and Political Rights (right to life)
- Article 7 of the International Covenant on Civil and Political Rights (right to be free from torture or to cruel, inhuman or degrading treatment or punishment)
- Article 16 of the International Covenant on Civil and Political Rights (right to recognition everywhere as a person before the law)
- Article 26, the International Covenant on Civil and Political Rights (right to non-discrimination)
- Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights (procedure for communications)

4) Legal Arguments
The Author

The author claimed that unborn children are victims of a violation of Article 26 of the Covenant, as the State party did not treat unborn children as equal before the law, and did not provide them with legal protection. He pointed 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 opined 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.

5) Decision

The Committee noted that the author did not claim that he is a victim of the alleged violations of the Covenant by the State. The author stated that he was submitting the communication on behalf of all unborn children in the State in general. The Committee noted 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 therefore considered that the author's communication amounted to an actio popularis and was inadmissible under Article 1 of the Optional Protocol.