



**International Covenant on
Civil and Political Rights**

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Ninety-eighth session
8 to 26 March 2010

Views

Communication No. 1246/2004

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| <u>Submitted by:</u> | Patricia Angela Gonzalez (not represented by counsel) |
| <u>Alleged victims:</u> | The author and her husband, Lazaro Osmin Gonzalez Muñoz |
| <u>State party:</u> | Republic of Guyana |
| <u>Date of communication:</u> | 14 December 2003 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 18 February 2004 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 25 March 2010 |

* Made public by decision of the Human Rights Committee.

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| <i>Subject matter:</i> | Denial of citizenship of a Cuban doctor married to a Guyanese national. |
| <i>Procedural issues:</i> | Author's substantiation of claims; exhaustion of domestic remedies. |
| <i>Substantive issues:</i> | Right to a fair hearing; right not to be subjected to arbitrary interference with family life. |
| <i>Articles of the Covenant:</i> | 14 (1); 17, (1). |
| <i>Articles of the Optional Protocol:</i> | 2; 5 (2) (b). |

On 25 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1246/2004.

[ANNEX]

ANNEX

**Views of the Human Rights Committee under article 5,
paragraph 4, of the Optional Protocol to the International
Covenant on Civil and Political rights (Ninety-eighth session)**

concerning

Communication No. 1246/2004**

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| <u>Submitted by:</u> | Patricia Angela Gonzalez (not represented by counsel) |
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2010,

Having concluded its consideration of communication No. 1246/2004, submitted to the Human Rights Committee by Patricia Angela Gonzalez under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Patricia Angela Gonzalez (maiden name Sherett), a Guyanese citizen born in 1953. Although she does not invoke any specific provisions of the International Covenant on Civil and Political Rights,¹ her communication

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

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

¹ The Covenant and the Optional Protocol entered into force for the State party respectively on 15 May 1977 and 10 August 1993. On 5 January 1999, the State party notified the Secretary-General that it had decided to denounce the Optional Protocol with effect from 5 April 1999. On the same date, the State party re-acceded to the Optional Protocol with a reservation concerning the Committee's

appears to raise issues under articles 7; 14, paragraph 1; and 17 of the Covenant. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 18 May 2000, Mr. Lazaro Osmin Gonzalez Muñoz, a Cuban doctor, entered Guyana under a medical cooperation agreement between Cuba and Guyana to render medical services for a period of two years. His contract of 15 May 2000 with the Cuban Central Unit for Medical Cooperation (UCCM) provided, *inter alia*, that he must comply with the legal provisions in force for citizens of Cuba if he decides to marry during the period of his contractual obligations. This would nevertheless not exempt him from completing his contractual obligations with the UCCM. He was also required to obtain prior authorization from the UCCM before entering into contracts with third parties. As for his marital status, the contract stated that he was married.

2.2 From May 2000 to July 2001, Mr. Gonzalez worked at a regional hospital, until he was sent back to Cuba for one-month vacation. After his return to Guyana, he was assigned to another hospital. On 6 November 2001, he underwent surgery for appendicitis. Meanwhile, the Cuban Embassy learnt about his engagement with Mrs. Sherrett. When Mr. Gonzalez was declared fit for work, the Cuban Embassy informed him that he had to return to Cuba for full recuperation. He decided not to return to Cuba, fearing that otherwise he would not be allowed to return to Guyana.

2.3 On 13 December 2001, the author and Mr. Gonzalez married in Georgetown and, on 20 December 2001, Mr. Gonzalez applied to the Immigration Department, Ministry of Home Affairs for Guyanese citizenship, under Article 45² of the Constitution of Guyana (1980).

2.4 On 19 March 2002, an agent of the Ministry of Home Affairs told the author and her husband that the Cuban Embassy had warned the Guyanese authorities of the possible consequences of granting Mr. Gonzalez citizenship or a work permit. Setting such a precedent could jeopardize the medical cooperation between both countries, e.g. the further deployment of the Cuban Medical Brigade to Guyana and the grant of scholarships to Guyanese students. They were also advised that the Guyana courts had no jurisdiction over the immigration department.

2.5 By letter of 27 March 2002, the Ministry of Home Affairs advised Mr. Gonzalez that “[i]t is not now convenient to consider any application for work permit outside of the Government of Guyana” and that his application for permanent residence and citizenship “cannot be processed at this time.”

2.6 On 23 April 2002, Mr. Gonzalez filed a writ of *certiorari* in the High Court, challenging the refusal of the Minister of Home Affairs to register him as a Guyanese citizen. In an exchange of affidavits submitted to the Court, Mr. Gonzalez claimed, and the State party denied: (a) that he had not breached his contract with the UCCM by seeking employment in private hospitals; (b) that his current marriage was not bigamous, since his

competence to consider communications from persons “under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith.”

² Article 45 of the Constitution of Guyana (1980) provides: “Any person who, after the commencement of this Constitution, marries a person who is or becomes a citizen of Guyana shall be entitled, upon making an application in such manner and taking such oath of allegiance as may be prescribed, to be registered as a citizen of Guyana: Provided that the right to be registered as a citizen of Guyana under this article shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.”

first marriage with a Cuban national had been dissolved by judgment of 29 January 2001 of the Tribunal of La Lisa (Cuba);³ (c) that he was entitled under Article 45 of the Constitution to be registered as citizen of Guyana; (d) that Section 7⁴ of the Guyana Citizenship Act, on which the Minister's refusal to register him as citizen was based, was incompatible with the Constitution; (e) that the Minister's decision violated principles of natural justice; and (f) that it was subject to appeal to the courts.

2.7 In his reply, the Attorney-General stated that it had been established by Cuban authorities that Mr. Gonzalez's divorce certificate was not recorded in the books of the Tribunal of La Lisa; that it did not carry a folio number; and that it had no legal validity outside Cuba, since it was not authenticated by the Foreign Ministry of Cuba. Even if Mr. Gonzalez was lawfully married to a Guyanese citizen, he did not have an absolute right to be registered as a citizen of Guyana under Article 45 of the Constitution. The Minister had lawfully exercised his discretion under Section 7 of the Citizenship Act and Articles 42(1) and 45 of the Constitution to refuse citizenship on grounds of national security and public policy, when he considered that the relations between Guyana and Cuba would be affected in the event that Mr. Gonzalez breached his obligation to return to Cuba at the end of his contract; that by granting citizenship to Mr. Gonzalez, Guyana would "open the floodgates" for other Cuban doctors working in Guyana on government contract; and that other cooperation agreements and foreign policy matters would also be jeopardized. Public policy grounds were a matter to be decided by the executive branch rather than the judiciary.⁵

2.8 Invoking judicial precedent,⁶ Mr. Gonzalez replied that the Minister of Home Affairs was required to exercise his discretion reasonably and to give reasons for refusing an application for citizenship in order to enable the applicant to rebut such reasons or to challenge the justification for the refusal before the courts. In *Attorney General v. Ryan*,⁷ the Privy Council had declared Section 7 of the Bahamas Nationality Act (1973), which was similar to Section 7 of the Guyana Citizenship Act, unconstitutional and void, because it made the right to be registered as a citizen of the Bahamas subject to the sole discretion of the executive branch of government.

2.9 On 9 May 2002, the High Court of the Supreme Court of the Judicature granted Mr. Gonzalez *certiorari*, and on 12 November 2003, it quashed the decision of the Minister of Home Affairs to refuse to register Mr. Gonzalez as a citizen, which it considered to be unreasonable, arbitrary, in breach of principles of natural justice, and based on irrelevant considerations. It ordered the Minister to review the application for citizenship and to provide Mr. Gonzalez with an opportunity to present evidence in support, as well as to refute any evidence that may be presented for the refusal, of his application within one month of the date of the Court's decision.

³ A certified translation of a divorce certificate, as well as a copy of the original, dated 9 February 2001 is enclosed with the communication.

⁴ Section 7 of the Guyana Citizenship Act (1966) reads: "(1) The Minister may, if he is satisfied that the interests of national security or public policy so require, refuse to register as a citizen of Guyana any person to whom the proviso to article 42(1) or 45 of the Constitution or section 4(2) of this Act applies. (2) The Minister shall not be required to assign any reason for the exercise of any discretionary power conferred on him as to the registering as a citizen, the naturalizing, or certifying the citizenship, of any person and no exercise of any such power shall be subject to appeal or review in any court."

⁵ Reference is made to House of Lords, Secretary of State for the Home Department v. Rehman, 3 WIR (2001) 877, 893-895.

⁶ R. v. Secretary of State for the Home Department Ex Parte Fayed et al. (1997), 1 All E.R. 274.

⁷ 1 WLR (1980) 143.

2.10 On 28 November 2003, the Minister of Home Affairs met with the author, her husband and their lawyer to review Mr. Gonzalez's application for citizenship. No decision on review had been taken at the end of the Court's deadline (12 December 2003).

The complaint

3.1 The author claims that the Minister's refusal to register Mr. Gonzalez as a citizen of Guyana, as well as the failure to comply with the Court order to review his case within the one month deadline, violates his constitutional rights as the spouse of a Guyanese citizen and amounts to "miscarriage of justice". She also claims that, as a dissident, he would face long term imprisonment or execution if returned to Cuba. The fact that he had challenged not only the decision of the Minister of Home Affairs of Guyana but, indirectly, also the Cuban Embassy's request to deny him citizenship would be considered a "counterrevolutionary action" by Cuban authorities.

3.2 For the author, the Minister's failure to comply with the order of the High Court is a clear indication that he will be denied citizenship. At a press conference, the Minister had publicly announced that the author and her husband would be deported to Cuba once court proceedings were over. There were good reasons to believe that his case was determined at a political level during the visit of a high level diplomatic delegation from Cuba.

3.3 Although the author does not invoke any specific provisions of the Covenant, her communication appears to raise issues under articles 7; 14, paragraph 1; and 17, paragraph 1.

State party's observations on admissibility

4.1 On 26 April 2004, the State party challenged the admissibility of the author's claims, arguing that she had not substantiated how the non-registration of her husband as a Guyanese citizen would violate his rights under the Covenant. The communication is therefore considered inadmissible *ratione materiae* and also is said to constitute an abuse of the right of submission.

4.2 The State party reiterates that the right for spouses of Guyanese citizens to be registered as citizens of Guyana is subject to such exceptions and qualifications as may be prescribed in the interests of national security or public policy (Article 45 of the Constitution and Section 7 of the Guyana Citizenship Act). The Minister was not required to justify his decision, nor was the decision subject to appeal or review in any court. Judicial precedent confirmed the absence of an absolute right to registration as a citizen.⁸

4.3 The State party submits that, pursuant to the High Court's order of 12 November 2003, the Minister of Home Affairs decided on the review of Mr. Gonzalez's citizenship application on 14 April 2004. The Minister determined that Mr. Gonzalez had breached his contract with the UCCM, because he left Guyana for an unknown destination between 1 and 31 July 2001 and because he thereafter withdrew his services from the Government of Guyana to seek employment with private hospitals. Without determining whether or not his marriage in Cuba was still valid, the Minister refused to register him as a Guyana citizen or to grant him a work permit, arguing that the breach of his contractual obligations towards UCCM could not be condoned, as it could adversely affect the good relations between the Governments of Guyana and Cuba and could "lead to a cessation of further assistance to Guyana, particularly in the area of health provision to Guyanese."

⁸ The State party quotes from a judgment of the Court of Appeals of Guyana, *Nielsen v. Barker* (1982), 32 West Indian Reports 254.

Author's comments

5.1 On 23 June 2004, the author commented on the Minister's decision on review dated 14 April 2004, arguing (a) that in July 2001, her husband had been on home leave; (b) that rather than withdrawing his services from the Government of Guyana after his return to Guyana, he had been assigned by the Minister of Health to another hospital as a resident doctor; and (c) that he had never breached his contract with the UCCM, but had been told by the Cuban Embassy to return to Cuba for "full recuperation".

5.2 The author submits that, on 31 May 2004, she appealed the Minister's decision of 14 April 2004 to the High Court of the Supreme Court of Judicature, seeking a declaration (a) that the refusal to grant her husband citizenship amounts to torture or inhuman or degrading treatment and violates her constitutional right to freedom of movement, as it would compel her to reside outside Guyana to maintain her marital relationship; (b) that the Minister of Home Affairs "is a tribunal charged to determine civil rights and obligations but does not satisfy the requirements of Article 144(8)⁹ of the Constitution of the Republic of Guyana"; and (c) that the Minister's exercise of discretion under Section 7 of the Guyana Citizenship Act "is unconstitutional, unreasonable, *ultra vires* and null and void," as the national security and public policy exceptions are not sufficiently defined in an Act of Parliament or in subordinate legislation.¹⁰ By reference to article 17 of the Covenant, she applied for interim orders compelling the Minister to grant the author residence and work permits.

5.3 In his reply, the Minister stated: (a) that Mr. Gonzalez had breached the terms of his contract with the UCCM by seeking private employment before the end of the contract; (b) that he had not provided proof of the divorce of his first marriage; (c) that the right of a person who marries a Guyanese citizen to apply under Article 45 of the Constitution for registration as a citizen is a qualified right and does not incorporate by implication any right of abode in the country; (d) that his decision to refuse to register Mr. Gonzalez as a citizen of Guyana complied with principles of natural justice and was not subject to appeal or review in any court; and (e) that the decision did not contravene the author's constitutional right to freedom of movement.

5.4 Lastly, the author informs the Committee that her husband had temporarily left Guyana for his personal safety and in order to find work abroad.

State party's additional observations on admissibility and author's comments

6. On 30 November 2004, the State party submitted that the author failed to exhaust all available domestic remedies, as the hearing for the motion she filed with the High Court in May 2004 only began on 28 October 2004.

7.1 In a submission dated 9 February 2005, the author criticized the State party's additional admissibility submission as "another maneuver and excuse to escape responsibility." She argues that the communication had been registered by the Committee on the basis that the author had exhausted all available domestic remedies.

⁹ Article 144(8) of the Constitution of Guyana (1980) reads: "Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial: and where proceedings for such a determination are instituted by any person before such a court or other tribunal, the case shall be given a fair hearing within a reasonable time."

¹⁰ Exceptions to the right in Article 45 of the Constitution to be registered as a citizen of Guyana must be "prescribed" in the interests of national security or public policy. Article 49(1) of the Constitution of Guyana defines "prescribed" as follows: "In this Chapter 'prescribed' means prescribed by or under any Act of Parliament."

7.2 The author submits that, rather than reviewing the application for citizenship, the Minister had based his decision of 14 April 2004 on the same grounds as his first decision denying Mr. Gonzalez citizenship, which the High Court had considered to be unreasonable, arbitrary, in breach of principles of natural justice and based on irrelevant considerations. The Minister took this decision four months after the deadline set by the Court (12 December 2003). The reason for her new motion in the High Court seeking constitutional relief was to challenge the Minister's miscarriage of justice.

7.3 The author submits that 15 months after the High Court's ruling, the State party was still hiding behind unduly prolonged legal proceedings, while she and her husband were forced to live in separate countries to ensure his safety and subsistence.

8. On 9 June 2005, the State party again challenged the admissibility of the communication on grounds of non-exhaustion of available domestic remedies, as the case regarding the granting of citizenship was still pending at the High Court. The author's motion in the High Court had been scheduled for hearing on 10 June 2005, and any decision of the High Court would be subject to appeal to the Court of Appeal of Guyana, as well as to further appeal to the Eastern Caribbean Court of Justice.

9. On 3 August 2005, the author informed the Committee that she and her lawyers were awaiting clarification as to whether Justice P. [*sic.*] would continue presiding over her case in the High Court after his reassignment to other courts. It was unknown to her and her lawyers when the hearing of her case would continue in the High Court.

10.1 On 3 October 2005, the author submitted that she had still not been informed when her case in the High Court would be resumed. At the most crucial point of the case, when both parties were about to make their summations for the Judge's consideration and decision, the presiding judge was removed from the courts in the County of Demerara and sent to preside in the courts of the County of Berbice. This was yet another maneuver on the part of the State party to frustrate justice. She invokes the principle that justice delayed is justice denied.

10.2 The author reiterates that at the time of registration of the communication, all available domestic remedies had been exhausted, that the Minister of Home Affairs had failed to comply with the order of the High Court within the prescribed time limit, and that his decision on review, dated 14 April 2004, fell short of constituting a review, as it was based on the same grounds as the first decision refusing to register her husband as a citizen of Guyana. There was no reason to believe that the State party would respect the rule of law in the second set of proceedings, after it had already exhibited contempt for the ruling of the High Court in the first set of proceedings.

10.3 The author claims that the State party denies her the basic human right to live and work peacefully with her husband in Guyana, although she is a citizen of Guyana and married her husband according to the laws of the State party. It was obvious that the State party's intention was to force her into exile, if she wanted her marriage and her family to survive. This was in violation of her Covenant rights.

Additional information from the author

11.1 On 12 May 2006, the author informed the Committee that the hearing in her case resumed on 2 December 2005 and concluded on 27 January 2006. However, no judgment had been handed down so far. She submitted several submissions to the High Court in relation to her constitutional motion:

- a) In the written submissions on behalf of the applicant, the author's lawyer sought declarations by the Court that the decision of the Minister of Home Affairs infringed her constitutional rights to freedom of movement and to reside in the State party on

the ground that she would be compelled to reside outside Guyana in order to maintain her marital relationship; that her husband was permitted to lawfully enter and re-enter and depart from Guyana; and that the exercise of discretion by the Minister was unconstitutional as no matters constituting interests of national security or public policy were set out in any Act of Parliament or subordinate legislation. Moreover, the Minister had failed to identify any cabinet document or document tabled in the National Assembly indicating that there was a special regime in respect of Cuban doctors married to Guyanese obtaining citizenship. There was no evidence that Mr. Gonzalez had breached his contract, which was a private contract and could not be used in the circumstances to form a basis for public policy. The lawyer also sought orders compelling the Minister to grant Mr. Gonzalez the necessary permits enabling him to remain and to engage in lawful employment in Guyana, as well as interim orders to protect his rights until a final decision on motion. By reference to article 17 of the Covenant and judicial precedent,¹¹ the lawyer also invoked the author's and her husband's right to family life.

b) In the submission on behalf of the respondents, the Attorney General reiterated that Mr. Gonzalez "does not have an absolute right to reside in Guyana by virtue of his alleged marriage to a Guyanese citizen." Rather, the right of a person who marries a Guyanese citizen to apply under Article 45 of the Constitution of 1890 for registration as a citizen of Guyana was a qualified right and did not imply any right of abode in the country. The decision of the Minister to refuse him citizenship was valid, since the Minister was vested with a discretionary power under Section 7 of the Guyana Citizenship Act (Cap. 14:01) and Article 45 of the Constitution, which he had exercised on public policy grounds. The author was precluded from basing her constitutional motion on article 17 of the Covenant because the right to protection against interference with family life was not a fundamental right under the Constitution (Article 154 (a) (2) of the Constitution). Moreover, she was not entitled to a legitimate expectation upon marriage to a Cuban doctor that he would remain in Guyana. The Minister had acted fairly when denying citizenship to Mr. Gonzalez, who had been provided with a hearing and with reasons for the refusal of citizenship.

c) In the submissions in reply, the author's lawyer reiterated that the "purported" exercise of discretion by the Minister of Home Affairs was flawed, in the absence in legislation of a clear definition of what constitutes public policy. The Minister had failed to produce any evidence of public policy and to consider the author's constitutional rights. Although article 17 of the Covenant was not a fundamental right under the Constitution, the Covenant was nevertheless binding on the Executive, and the Court was bound to interpret the fundamental rights provisions of the Constitution in the light of "international law, international conventions, covenants and charters bearing on human rights" (Article 39 (2) of the Constitution).

11.2 On 5 January 2008, the author informed the Committee that the acting High Court judge, Justice P., had dismissed her constitutional motion on 1 October 2006, ordering her to pay costs of 25,000 Guyana dollars. From the bench, he had suggested that she could take the matter to the Court of Appeal. Her lawyer had filed a notice of appeal in the Court of Appeal. However, her case could not be scheduled before the Court of Appeal because the judgment of the High Court had still not been issued in writing, although her lawyer had

¹¹ *Rattigan v. Chief Immigration Officer* [1994] 1 LRC 343, at 351-352, making reference to the Committee's decision in Communication No. 35/1978.

on several occasions consulted with the Chief Justice on the unwarranted delay on the part of the High Court judge to submit his ruling in writing.

11.3 On 15 September 2008, the author informed the Committee that Justice P. had still not issued his judgment of 1 October 2006 in writing, thus effectively preventing her notice of appeal from being entertained by the Court of Appeal. She argues that the unjustified two-year delay in issuing a written judgment amounts to a denial of justice.

State party's non-response on the merits

12.1 On 26 April 2004, the State party requested the Committee, under rule 97, paragraph 3, of the Committee's rules of procedure, to reject the communication as inadmissible. On 13 May 2004, the Committee, through its Special Rapporteur for New Communications, informed the State party of its decision not to examine the admissibility of the communication separately from the merits and reminded the State party to provide its observations on the merits by 18 August 2004. This time limit was extended until 4 October 2004 at the State party's request. On 30 November 2004, the State party again challenged the admissibility of the communication. Following reminders dated 10 November 2004, 10 December 2004 and 8 March and 6 April 2005, the State party informed the Committee on 9 June 2005 that it was in the process of preparing its observations on the admissibility and merits of the communication. On 15 June 2005, the State party was requested to keep the Committee informed about the state of the proceedings before the High Court and the Court of Appeal of Guyana. On 24 December 2007 and 24 January 2008, the Committee reminded the State party to provide updated information on the judicial proceedings concerning Mr. Gonzalez's citizenship. A final reminder was sent on 26 February 2008, together with a final reminder for the State party to submit its observations on the merits of the communication. On 8 July 2008, the State party, without commenting on the merits, submitted that the author's notice of appeal was still pending before the Court of Appeal.

12.2 The Committee recalls that the State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit to it, within six months, written explanations or statements clarifying the matter and the remedy, if any, that may have been granted. The Committee regrets the State party's failure to provide any observations with regard to the merits of the author's claims. In the absence of any such information from the State party, due weight must be given to the author's claims, to the extent that they have been substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

13.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

13.3 Insofar as the author claims that Mr. Gonzalez would face imprisonment or even execution if returned to Cuba, raising issues under article 7, the Committee considers that the matter is moot, since Mr. Gonzalez is not physically within the jurisdiction of the State party and accordingly she has not sufficiently substantiated the claim for the purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

13.4 As to the claims that the proceedings before the High Court were unduly prolonged and that the delay on the part of the High Court judge to issue a written ruling was

unwarranted, the Committee notes that these claims relate to judicial proceedings concerning Mr. Gonzalez's attempts to contest a negative decision about his citizenship application. It recalls that the concept of a 'suit at law' under article 14, paragraph 1, of the Covenant is based on the nature of the right in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights.¹² Article 45 of the Constitution of Guyana provides that any person who marries a Guyana citizen is entitled to registration as a Guyana citizen, even if this right may be limited by such exceptions or qualifications as may be prescribed in the interest of national security or public policy. Although Section 7 (2) of the Guyana Citizenship Act provides that the Minister's exercise of his discretionary power to refuse to register as a Guyana citizen any person to whom the exceptions or qualifications to Article 45 of the Constitution apply is not subject to appeal or judicial review, the Committee notes that this did not prevent the High Court from reviewing the Minister's decisions of 27 March 2002 and 14 April 2004 on Mr. Gonzalez's citizenship application and from quashing the Minister's refusal of citizenship registration in the first decision. While decisions on citizenship applications do not necessarily need to be determined by a court of law, the Committee considers that whenever, as in the present case, a judicial body is entrusted with the review of an administrative decision on such an application, it must respect the guarantees of a fair hearing as enshrined in article 14, paragraph 1.¹³ The Committee thus concludes that, in the circumstances of the case, article 14, paragraph 1, second sentence, applies to Mr. Gonzalez's citizenship proceedings.

13.5 The Committee notes that the author made repeated efforts to bring the procedural delays to the attention of the competent judicial authorities. In this regard, it recalls the author's uncontested statement that she and her lawyers sought clarification as to when the hearing of her case would continue and as to whether Justice P. would continue to preside over her case in the High Court, after his reassignment to another jurisdiction, and that her lawyers raised the delay by Justice P. in issuing a written decision during consultations with the Chief Justice. It also notes that the delay on the part of the High Court judge to issue his ruling in writing was unexplained. The Committee refers to its case law to the effect that, for the purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must both be effective and available and must not be unduly prolonged. The Committee considers that, in the present case, domestic remedies have been unreasonably prolonged and that article 5, paragraph 2 (b), does not preclude it from examining the communication.

13.6 Regarding the author's claims raising issues under article 17, paragraph 1 of the Covenant, the Committee considers that such claims have been sufficiently substantiated for purposes of admissibility. Not finding any other obstacle to it, the Committee considers this part of the communication admissible.

Consideration of the merits

14.1 The issue before the Committee is whether the length of the judicial proceedings before the High Court of the Supreme Court of Judicature and the presiding Judge's delay in submitting his decision in writing violated the author's and her husband's rights under the Covenant.

14.2 The Committee recalls that the concept of a fair hearing, as enshrined in article 14, paragraph 1, of the Covenant, necessarily entails that justice be rendered without undue delay.¹⁴ It notes that the author appealed the Minister's decision of 14 April 2004 to the

¹² Communication No. 112/1981, *Y. L. v. Canada*, at paras. 9.1 and 9.2.

¹³ Communication No. 1015/2001, *Pertterer v. Austria*, at para. 9.2.

¹⁴ Communication No. 203/1986, *Muñoz Hermoza v. Peru*, at para. 11.3.

High Court on 31 May 2004, and that it took the presiding Judge until 1 October 2006 to decide on her motion, although the hearing of the case had been concluded on 27 January 2006. The Committee considers that the State party has not explained why the Court's review of the constitutionality of the ministerial decision in question took 28 months. Even if the fact that the presiding High Court judge was temporarily assigned to other courts may to a certain extent explain the postponement of the hearing of the case during 2005, it cannot justify a lapse of time of more than 8 months between the conclusion of the hearing (27 January 2006) and the final decision (1 October 2006), during which no written judgment was prepared. Moreover, the subsequent delay on the part of the High Court judge to issue his ruling in writing had further delayed the proceedings for more than two years, as the author's appeal to the Court of Appeal could not be scheduled for hearing. The Committee observes that the combined effect of the delays in the judicial proceedings, following the Minister's failure to review the author's husband's application for citizenship within one month, as ordered in the decision of the High Court of 12 November 2003, was detrimental to the author's and her husband's legitimate interest to clarify his status in Guyana. Furthermore, it does not appear from the file before the Committee that the appeal against the decision of 14 April 2004 of the Minister of Home Affairs had suspensive effect or that the High Court issued any interim orders to protect the author's and her husband's rights pending the final determination of the case. Against this background, the Committee concludes that the above indicated delays were unreasonable and that article 14, paragraph 1, of the Covenant has been violated.

14.3 As to the author's claims raising issues under article 17, paragraph 1 of the Covenant the Committee notes that Mr. Gonzalez is not allowed to reside legally in Guyana and that, as a result, he had to leave the country and cannot live with his wife. It is also evident that they cannot live in Cuba. The State party has not indicated where else they might live as a couple. The Committee considers that this fact constitutes an interference with both spouses' family. The question is whether such interference is arbitrary or unlawful. The Committee recalls its jurisprudence that interference authorized by States can only take place on the basis of law. As for the concept of arbitrariness, it is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.¹⁵

14.4 In the present case, the Committee notes the State party's submission that the Minister refused to register Mr. Gonzalez as a Guyana citizen or to grant him a work permit arguing that the breach of his contractual obligations towards UCCM could adversely affect the good relations between the Governments of Guyana and Cuba. It also notes the decision of the High Court dated 12 November 2003 which quashed the Minister's decision. In view of the delays regarding the subsequent proceedings, the Committee is not in a position to conclude that the interference referred to was unlawful. However, the Committee does conclude that the manner in which the State party's authorities have dealt with Mr. Gonzalez's request for citizenship is unreasonable and amounts to arbitrary interference with the author and her husband's family. It thus constitutes a breach of their right under article 17, paragraph 1 of the Covenant.

15. 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 it reveal a violation of article 14, paragraph 1, and article 17, paragraph 1 of the Covenant.

¹⁵ General Comment 16, paragraphs 3 and 4.

16. In accordance with article 2, paragraph 3, of the Covenant, the author and her husband are entitled to an effective remedy, including compensation and appropriate action to facilitate the family reunification of the author and her husband.. The State party is also under an obligation to ensure that similar violations do not occur in the future.

17. 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 or not and that, pursuant to article 2 of the Covenant, that State party has undertaken an obligation to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, 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 Committee's Views.

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

Appendix

Individual opinion of Committee member, Ms. Ruth Wedgwood

The Human Rights Committee finds that the State party violated Articles 14 and 17 of the Covenant in its extensive and unreasonable delays in the judicial appeals from the administrative refusal to grant either a residence permit, work permit or citizenship to the author's husband, so that they might reside together within the territory of the State party of which she is a citizen. I join in that conclusion, and doubt that the desire to qualify for future economic assistance from a foreign state such as Cuba could constitute a permissible reason to deny a right of residence. But in this case the Committee has not had occasion to address the broader substantive question whether the Covenant creates an unvarying obligation, as such, for a State party to allow residence and naturalization to any recognized spouse of a citizen, when there is no other apparent place where they may reside together.

Article 17 should be read with a generous spirit in its protection of the family. But before addressing this issue, the Committee may also wish to examine the negotiating history of the Covenant and the record of general state practice, in regard to the concerns that states may have professed in the discharge of their obligations in the protection of all citizens.

[*signed*] Ms. Ruth Wedgwood

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