



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Thirty-seventh session**

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**Decision of the Committee on the Elimination of  
Discrimination against Women under the Optional  
Protocol to the Convention on the Elimination of All  
Forms of Discrimination against Women**

**Communication No. 11/2006\***

<i>Submitted by:</i>	Ms. Constance Ragan Salgado
<i>Alleged victim:</i>	The author
<i>State party:</i>	United Kingdom of Great Britain and Northern Ireland
<i>Date of communication:</i>	11 April 2005 (initial submission)
<i>Document references:</i>	Transmitted to the State party on 15 February 2006 (not issued in document form)

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting on 22 January 2007*

*Adopts the following:*

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\* The following members of the Committee participated in the examination of the present communication: Ferdous Ara Begum, Magalys Arocha Dominguez, Meriem Belmihoub-Zerdani, Saisuree Chutikul, Dorcas Coker-Appiah, Mary Shanthi Dairiam, Cees Flinterman, Naela Mohamed Gabr, Françoise Gaspard, Hazel Gumede Shelton, Ruth Halperin-Kaddari, Tiziana Maiolo, Violeta Neubauer, Pramila Patten, Silvia Pimentel, Fumiko Saiga, Heisoo Shin, Glenda P. Simms, Dubravka Šimonović, Anamah Tan, Maria Regina Tavares da Silva, Zou Xiaojiao.

## **1. Decision on admissibility**

The author of the communication dated 11 April 2005 is Constance Ragan Salgado, a British citizen born on 24 November 1927 in Bournemouth, United Kingdom of Great Britain and Northern Ireland, currently residing in Bogotá, Colombia. She claims to have been a victim of violations by the United Kingdom of Great Britain and Northern Ireland of articles 1, 2 (f) and 9, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women by having been prevented from transmitting her British nationality to her eldest son by descent. The author is representing herself. The Convention and its Optional Protocol entered into force for the State party on 7 May 1986 and 17 March 2004, respectively.

## **2. The facts as presented by the author**

2.1 In 1954, the author left England to make her home in Colombia with her husband. On 16 September 1954, the author's eldest son, Alvaro John Salgado, was born in Colombia of a Colombian father. At that time, the author made an application to the United Kingdom Consulate to obtain British nationality for her son and was told that the entitlement to British nationality came through the paternal line; as his father was Colombian, her son was considered an alien.

2.2 The British Nationality Act 1981 ("the 1981 Act"), which entered into force in 1983, amended previous nationality legislation and conferred equal rights to women and men in respect of the nationality of their children under the age of 18. The author was told that her son still did not qualify for British citizenship under the 1981 Act. The author protested by letter to the British Consul and to the Home Office, claiming that, had her son claimed British nationality through a British father instead of through her, no age limit would have applied to him.

2.3 British nationality legislation again changed when the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") entered into force on 30 April 2003 and added section 4C to the 1981 Act ("Acquisition by Registration: Certain persons born between 1961 and 1983"). Children — by now adults — born abroad between 7 February 1961 and 1 January 1983 of British mothers would now be eligible to register as British nationals if they satisfied certain other conditions.

2.4 In early 2003, the British Consul in Bogotá contacted the author to enquire as to whether she had any children born after 7 February 1961. She replied that her youngest son was born in 1966 and had acquired British nationality, but that her eldest son still had not. She was told that he did not qualify due to the fact that he was born before the cut-off date established under the 2002 Act.

## **3. The complaint**

3.1 The author alleges that she suffered sex-based discrimination on account of the British Nationality Act 1948 ("the 1948 Act"), under which she was unable to register her son as a British national because the 1948 Act provided for citizenship by descent from a father but not from a mother. She claims that the discrimination has been continuous because it was neither eliminated under the 1981 Act nor under the 2002 Act and her son remains ineligible to acquire British nationality by registration on account of his age. The author maintains that discrimination against women has only been partially corrected through legislation.

3.2 The author claims that, although women are supposed to be able to transmit their citizenship to any children born abroad “on equal terms with men”, she has continued to be unable to do so, because children who were already adults before 1981 are not covered under current legislation. She maintains that the 2002 Act discriminates against her and other British mothers whose children, having foreign fathers, were born abroad before 7 February 1961.

3.3 All of the author’s efforts to obtain citizenship for her eldest son have been to no avail. She has sent letters to various government officials, including the British Embassy in Bogotá and the Home Office, as well as to the Prime Minister and a number of Members of Parliament.

#### **4. The State party’s observations on admissibility**

4.1 By its submission of 13 April 2006, the State party requests that the communication be rejected as inadmissible. It notes that the United Kingdom ratified the Convention, subject to certain reservations, on 7 April 1986, and that the Committee’s jurisdiction to receive and consider this communication in relation to alleged violations of the rights set out in the Convention derives from the State party’s accession to the Optional Protocol to the Convention with effect from 17 December 2004.

4.2 As to the facts, the State party states that there is no indication of the nature of the application that the author made to the United Kingdom Consulate in Bogotá in 1954, but from the summary contained in the communication, it appears to have been no more than a request for recognition of the British citizenship of Alvaro John Salgado on the basis of his birth as the son of a mother who was a British citizen. This application could not have succeeded as a matter of the domestic law in force at that time.

4.3 Following repeated approaches to the United Kingdom Government, whether through its embassy or consulate in Bogotá or directly, the State party points out that the author has been informed that her eldest son remains ineligible for registration as a British citizen on the basis of having been born to a mother who had British citizenship.

4.4 According to the State party, there is no evidence to suggest that the author has ever sought to challenge any of these decisions through the English courts and the State party is not aware of any such proceedings having been brought by the author.

4.5 As regards relevant domestic law, the State party holds that, as a matter of general principle, under English law the acquisition of British citizenship by birth or descent is determined by reference to the individual’s circumstances at the time of his or her birth and by reference to the law in force at the time of his or her birth. Exceptions would have to be expressly provided for in subsequent legislation.

4.6 The State party explains that, at the time of the birth of the author’s eldest son, i.e., 16 September 1954, British nationality law was governed by the 1948 Act. Under section 5 of the 1948 Act, a person born after the commencement of the Act (subject to a number of exceptions) had a right to British citizenship by descent if his or her father was a British citizen at the time of birth. This automatic right by descent was not available to persons whose mother was a British citizen at the time of birth. The 1948 Act provided other means of acquiring British citizenship. Minor children of any British citizen could also be registered as a British citizen upon

application made in the prescribed manner by a parent or guardian at the discretion of the Secretary of State of the Home Department, who, in principle, would have exercised his discretion in line with Departmental policy at the time. Naturalization was subject to a number of conditions, including that the applicant was of full age and capacity.

4.7 The State party states that, in the mid- to late 1970s, the United Kingdom Government recognized the discriminatory impact of section 5 of the 1948 Act and, as a result, the (then) Home Secretary, Merlyn Rees, announced to the House of Commons on 7 February 1979 a transitional policy change with regard to applications by women who were born in the United Kingdom to have their minor children registered as British citizens. This general and transitional policy would apply to anyone under the age of 18 on the date that the new policy was announced (i.e., any child born to a British citizen mother after 7 February 1961).

4.8 The State party further explains that, on 1 January 1983, the 1981 Act entered into force and repealed the provisions of the 1948 Act. Section 2 (1) of the 1981 Act made provision for acquisition of citizenship by descent from either parent under certain conditions. The 1981 Act was further amended by section 13 of the 2002 Act. The amendment introduced section 4C into the 1981 Act, which gave persons who were covered by the policy announced on 7 February 1979 a statutory entitlement to register as British citizens. The effect of the new provision was that they were able to apply for registration even after they had attained the age of majority; the applicant had to have been born after 7 February 1961 and before 1 January 1983. These two dates reflect the fact that the policy announced on 7 February 1979 applied to persons born after 7 February 1961 and that 1 January 1983 was the date on which the 1981 Act came into force, from which time a mother who was a British citizen could transmit her citizenship in the same way as a British citizen father.

4.9 As regards inadmissibility *ratione temporis*, the State party states that the author complains that the United Kingdom violated her rights under article 9 (2) of the Convention and that she rightly draws the Committee's attention to the definition of discrimination against women in article 1 of the Convention and the obligation assumed under article 2 (f). The State party submits that, in order to determine whether the communication is inadmissible *ratione temporis*, it is important to consider with care the actual content of the complaint that is being made. The author complains that, in relation to her son born in 1954, she does not enjoy equal rights with men in relation to the passing on of her nationality to that son. She clearly did enjoy such equal treatment in relation to her younger son. As a result, the State party states that it is important to consider what rights, as a matter of domestic law, men have (or had) in relation to passing on their nationality to their children in relation to which women did not have "equal rights".

4.10 The State party clarifies that, under section 5 of the 1948 Act, children of British citizen fathers would be automatically, as from the time of their birth, British citizens by descent, while the children of British citizen mothers (whose father was not also British) did not enjoy such a right. The change in policy of 7 February 1979 did not provide any further rights for men in relation to the nationality of their children. On the contrary, it sought to modify, long before the United Kingdom ratified the Convention, existing practice in order to mitigate the effects of what was recognized as discrimination against women in the operation of the 1948 Act. The

1981 Act also did not provide any different rights for men in relation to the nationality of their children. Finally, section 4C of the 1981 Act, introduced by the 2002 Act, also provided no new or different rights for men in relation to the nationality of their children, but rather made statutory provision for persons born to British mothers, who were covered by the change in policy of 7 February 1979. As a result, it is submitted that the author's complaint can only be directed at the right provided under section 5 of the 1948 Act (at that time for men only) to pass on their nationality to their child born abroad automatically at the time of their birth. In temporal terms, the critical date, therefore, is the date of birth of the author's eldest son, namely 16 September 1954, i.e., long before the Convention was adopted by the General Assembly or came into force, and even longer before the United Kingdom ratified the Convention and/or acceded to the Optional Protocol. This would also be in line with the general principle underlying United Kingdom nationality law and the nationality law of most States, namely that a person's entitlement to acquisition of (British) citizenship by birth or descent is determined by reference to that person's circumstances and the law applicable at the time of their birth. Reference to the child's date of birth (or at the very least, the period of time during which the child can still be described as such) is also clearly in line with the wording of article 9 (2) of the Convention, which expressly relates to equal rights for women in relation to the nationality of their children. This reference to "children" must be read in line with the use of the term in other relevant international (human rights) instruments, such as article 24 (3) of the International Covenant on Civil and Political Rights; article 7 (1) of the United Nations Convention on the Rights of the Child; and articles 6 (1) and (2) of the European Convention on Nationality. In the United Kingdom, the age of majority was, at all material times, 18 years.

4.11 The State party further submits that, at the very least, from the date on which the author's eldest son achieved his majority, i.e., 16 September 1972, the author ceased to be the "victim" of the denial of British citizenship to her oldest son. As a general rule, it is only while a person is still a child that he should be able to benefit from a parent's citizenship; once a person has attained the age of majority, any application for citizenship should be based on the child's own personal connections with a country rather than through the child's mother's connections. Section 4C of the 1981 Act is very much an exception to this general rule and applies to a very limited category of persons. Therefore, any complaint about the continuing failure to recognize or register the author's eldest child as a British citizen would have to be brought by him.

4.12 The State party maintains that this analysis would not be undermined by a suggestion, if it were made, that the author has repeatedly and unsuccessfully sought the registration of her eldest son as a British citizen, whether under section 7 of the 1948 Act as applied following the announcement of the change of policy on 7 February 1979 or under the 1981 Act. Any refusal to register the author's eldest child under those provisions could not, by itself, form the basis of a complaint that the author has not been granted "equal rights with men", because none of these provisions are addressed to or provide specific rights for men. In any event, it is not clear that the author ever made an application for registration in relation to her eldest son at any time while he was still a child and, if so, that she pursued the available domestic remedies in the English courts.

4.13 The State party submits that, for these reasons, it cannot be said that this is a case in which “the facts that are the subject of the communication continued after that date”, i.e., of entry into force of the Optional Protocol for the United Kingdom; nor can it be said that the latest correspondence gives rise to a new violation. While the consequences of the difference in treatment experienced by the author in 1954 (or between 1954 and 1972) subsist in that the author’s son remains without British citizenship, the State party also submits that the situation as it relates to the son’s nationality does not, by itself, constitute a continuing or new violation of the author’s rights under article 9 (2) of the Convention.<sup>1</sup>

4.14 As regards exhaustion of domestic remedies, the State party states that article 4 (1) of the Optional Protocol requires the exhaustion of all available domestic remedies. The State party submits that this requires the author to have made “use of all judicial or administrative avenues that offer [her] a reasonable prospect of success”.<sup>2</sup> There is no indication in the author’s communication that, at the relevant time (in 1954 or between 1954 and 1972), she ever made an application for registration of her eldest son as a British citizen under section 7 (1) of the 1948 Act, an option that was clearly open to her. Furthermore, any refusal of such an application could and should have been challenged by way of judicial review in the High Court, which body exercised then and continues to exercise a supervisory jurisdiction over the exercise of statutory functions and/or the exercise of discretion by public authorities, including the Home Office in relation, inter alia, to decisions concerning questions of acquisition of nationality. The High Court, in exercising that jurisdiction, had and continues to have the power to quash decisions and/or make mandatory orders requiring a different decision to be made where it concludes that the public authority has acted unlawfully or irrationally. While the Convention had not been concluded at that stage, it would have been open to the author to challenge any refusal to exercise the discretion under section 7 (1) of the 1948 Act in favour of her eldest son on the basis that it was unreasonable under domestic law. She might have referred to the European Convention on Human Rights, which formed an international obligation to which the United Kingdom was subject and which would have been relevant to the exercise of statutory discretion.

4.15 The State party submits that the test for an effective remedy cannot be whether a complaint would have been successful or not but rather whether there is a procedure available in the domestic system capable of considering and, if persuaded of the merits, providing a remedy without the need for recourse to the Committee.<sup>3</sup> If the Committee were to consider, contrary to the above submissions, that the matter complained of by the author amounts not to a continuing violation but to a fresh violation which is not inadmissible *ratione temporis*, the State party maintains that the complaint would be equally inadmissible by reason of the author’s failure to have exhausted all available domestic remedies. While there is ample evidence that

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<sup>1</sup> Reference is made by analogy to the following two decisions of the Human Rights Committee: communication No. 174/1984 *J. K. v Canada* (CCPR/C/23/D/174/1984) and communication No. 872/1999 *Kurowski v Poland* (CCPR/C/77/D/872/1999).

<sup>2</sup> The State party quotes from communication No. 437/1990 *Patiño v Panama* (CCPR/C/52/D/437/1990) and refers to communication No. 942/2000 *Jonassen et al. v Norway* (CCPR/C/76/D/942/2000).

<sup>3</sup> The State party refers to the European Court of Human Rights application No. 18304/05 *Nykytina v United Kingdom* and suggests that the case applies *mutatis mutandis* in relation to the present communication.

the author has sought to exhaust the available administrative remedies (and any legislative redress, through her communications with the United Kingdom Government and sympathetic members of Parliament), she has wholly failed to exhaust the judicial remedies available.<sup>4</sup> The State party further maintains that the rule that local remedies must be exhausted before international proceedings may be instituted is also a well-established rule of customary international law. The rule reflects the view that “the State, where a violation occurred, should have an opportunity to redress it by its own means, within the framework of its own domestic legal system” (International Court of Justice in the *Interhandel* Case, ICJ Reports, 1959, p. 6 (27)).

4.16 The State party also maintains that the rules of international law emphasize the high test of ineffectiveness of possible remedies which must be found to exist before the general requirement of exhaustion of domestic remedies will be held no longer to apply.<sup>5</sup> The author could and should have brought proceedings under the Human Rights Act 1998 to challenge the lawfulness of the continuing refusal to register her eldest son as a British citizen.

4.17 The State party states that if, and insofar as the High Court were to find a violation of the author’s rights under the European Convention, the High Court would have had two options: either to seek to construe the 1981 Act in a manner compatible with the author’s or her son’s rights under the European Convention on Human Rights; or to make a declaration of incompatibility under section 4 of the Human Rights Act 1998. The latter option enables the United Kingdom Government to take swift remedial action. The State party further states that, while it is impossible to assess with any certainty whether such an application to the High Court would, in the end, be successful, there can be no suggestion that such access to the High Court does not amount to an effective remedy which the author is required to have exhausted.

4.18 The State party also puts forward that the communication is inadmissible because it is manifestly ill-founded. Upon ratification of the Convention, the United Kingdom entered the following reservation in relation to article 9:

The British Nationality Act 1981, which was brought into force with effect from January 1983, is based on principles which do not allow of any discrimination against women within the meaning of article 1 as regards acquisition, change or retention of their nationality or as regards the nationality of their children. The United Kingdom’s acceptance of article 9 shall not, however, be taken to invalidate the continuation of certain temporary or transitional provisions which will continue in force beyond that date.

The State party considers that the continuing consequences of the application of section 5 of the 1948 Act, which is at the heart of the communication, clearly falls within the “temporary and transitional provisions” contained in the 1981 Act. As a

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<sup>4</sup> The State party refers to the jurisprudence on the matter of the Human Rights Committee, in particular, to communication No. 222/1987 H. K. v France (CCPR/C/37/D/222/1987) and to jurisprudence of the European Court of Human Rights, including *Fressoz and Roire v France* [GC] No. 29183/95, paragraph 37, ECHR 1999-I; *Kudla v Poland* [GC], No. 30210/96, paragraph 152, ECHR 2000-XI; and *Banfield v UK*, app. No. 6223/04, decision of 18 October 2005.

<sup>5</sup> The State party refers to C. F. Amerasinghe’s *Local Remedies in International Law* (1990), p. 195; and Oppenheim’s *International Law* (9th edition), p. 525.

consequence, the effect of the reservation is that the United Kingdom incurs no responsibility under the Convention. The State party refers to the statement on reservations to the Convention of the Committee on the Elimination of Discrimination against Women, published as part of its report on its nineteenth session (see A/53/38/Rev.1). The State party considers that certain passages in that statement rightly reflect the position under international law, and in particular articles 19-23 of the Vienna Convention on the Law of Treaties, that it is for the States parties rather than the Committee to make binding determinations of whether a reservation entered by another State party is impermissible as being incompatible with the object and purpose of the Convention. The State party submits that the reservation to article 9 cannot be classified as “incompatible with the object and purpose of the present Convention” so as to be prohibited by article 28 (2) of the Convention. The State party considers it noteworthy that none of the other States parties to the Convention has sought to object to or challenge the compatibility of this reservation with the object and purpose of the Convention; nor has the Committee, other than through its general expression of concern about the number of reservations to the Convention contained in its general recommendations 4, 20, and 21 (paras. 41-48) and its statement on reservations, in its concluding comments on the United Kingdom raised any specific concerns about this reservation to article 9. As a consequence, the State party argues that the present communication, insofar as it is not inadmissible for any of the reasons set out above, is manifestly ill-founded because its subject matter falls squarely within the reservation entered by the United Kingdom upon ratification.

4.19 For the reasons set out above, the State party submits that the communication is inadmissible under article 4 (1) and/or article 4 (2) of the Optional Protocol; and insofar as that is relevant, at the very latest through the adoption of the 1981 Act, the United Kingdom has fulfilled its obligations under article 9 (2) read with articles 1 and 2 (f) of the Convention.

#### **5. The author’s comments on the State party’s observations on admissibility**

5.1 By her submission of 29 May 2006, the author reiterates her contention that her communication should be considered admissible as the facts that are the subject of the communication clearly continued after the entry into force of the Optional Protocol for the State party concerned inasmuch as the discrimination was once again made obvious on 7 February 2006 at the second reading of the Nationality, Immigration and Asylum Act 2006, when amendment 67, which mentioned her name as well as others and would have lifted the discrimination against them, was denied.

5.2 The author points out that the “temporary or transitional provisions” mentioned in the reservation of the United Kingdom have lasted for more than 20 years. The author is of the view that the temporary or transitional provisions ought to have been repealed with the 2002 Act or in 2006. She adds that the Government has deliberately blocked the legal route to redress by way of the reservation vis-à-vis those British mothers with children born before 1961 of foreign fathers.

5.3 The author maintains that the State party has not gone as far as it reasonably and practicably could to address the fact that persons, such as her son, are still unable to acquire British citizenship through the maternal line.

5.4 The author points out that the 1981 Act acknowledged the right of minor children born abroad after 7 February 1961 to British mothers (and foreign fathers) to register as British citizens. She maintains that once the Government acknowledged the right of selfsame persons to register as British citizens as adults under the 2002 Act, the cut-off date of 7 February 1961 was no longer relevant. If it was unjust and discriminatory to deny some children (who had now reached the age of majority) born abroad to British mothers the right to apply for registration, it would be equally unjust and discriminatory to deny the same right to others. The author wonders why the same right of registration could not be given to those adults who had previously been discriminated against under the 1981 Act.

5.5 The author disputes that nationality is determined by applying the legislation in force at the time of the individual's birth inasmuch as certain persons were able to register through their mothers in 1981 under the 1981 Act and on their own behalf as adults in 2002.

5.6 The author concedes that the 1981 Act partially corrected the sex discrimination which had historically existed by recognizing the right, as from that date, for women to pass on their nationality to their children on equal terms with men. However, it created new discrimination between certain mothers, those with children born before 1961 and those with children born after 1961. She submits that the discrimination was retained under the 2002 Act because those children who were born after 1961, whose mothers had failed to register them as minors, were able to do so as adults.

5.7 The author questions the fairness of nationality legislation that has not been made retroactive at least for those people who are still alive and affected by it and compares the situation with the Act abolishing slavery under which all slaves were freed. She believes that there should be a legitimate aim before a difference in treatment can be justified and wonders what that legitimate aim could be to single out one group of mothers. While the author recognizes that no Government can redress all the injustices of history and past generations, she thinks that it is any Government's obligation to redress those injustices which are within their capabilities, such as the present-day discrimination against living people, particularly if formal commitments, such as the Human Rights Act and the Convention on the Elimination of All Forms of Discrimination against Women, have been made by that Government to the rest of the world. She furthermore submits that the only possible excuse for a State not to fulfil its human rights obligations to its citizens would perhaps be overwhelmingly damaging consequences for the country (which is certainly not perceived as being the case) and, if this were so, the Government would have the moral duty to explain such consequences fully and satisfactorily.

5.8 The author maintains that a mother has a fundamental human right to pass on her nationality to her child on equal terms with men and with other mothers, whether that child be a minor or an adult, particularly as the same right has already been recognized for other persons, as minors and as adults, by two different nationality acts. She considers all continuing injustices, predicated or defended on the grounds that they were legal when they originated, unacceptable.

**6. Additional comments of the State party on admissibility**

6.1 By its submission of 21 July 2006, the State party continues to rely on its submissions on admissibility made on 13 April 2006.

6.2 The State party notes that the author has not expressly sought to engage with or dispute the State party's submission regarding the following: that the communication is inadmissible *ratione temporis*, by reason of the fact that, at the very least from the date on which the author's eldest son achieved his majority on 16 September 1972 (i.e., well before the adoption of the Convention by the General Assembly and, a fortiori, well before the State party's ratification of the Convention), the author had ceased to be a victim; that the communication is inadmissible by reason of her failure to exhaust all available domestic remedies; and/or that the provisions of the continuing consequences of section 5 of the 1948 Act are clearly covered by the actual terms of the reservation entered by the State party upon ratification of the Convention. The State party submits that any one of the first two grounds alone or these grounds in combination are sufficient to render this communication inadmissible.

6.3 The State party states that the author's comments appear to have focused primarily on the assertion that the legislative provisions covered by the reservation have been more than "temporary" but have been "prolonged for more than 20 years", and on the implicit invitation to the Committee to rule that the reservation is impermissible and invalid.

6.4 The State party furthermore argues that the author's comments ignore the fact that the reservation refers to certain temporary and transitional provisions which will continue in force beyond January 1983 and that the continued consequences of section 5 of the 1948 Act clearly fall within the definition of such a temporary, and more importantly, transitional provision. The State party explains that the word "transitional" is intended to refer to measures in place until the transfer from an "old" to a "new" regime has been completed, and not merely to provisions that remain in place until appropriate legislative changes can be made. Section 5 of the 1948 Act is the sole remnant of the old regime following the transition to the new, non-discriminatory regime set up under the 1981 Act. The State party further submits that, ever since the introduction of the 1981 Act, women have been able to pass their nationality to their newborn children in the same way as men have.

6.5 Moreover, the State party submits that the author's comments ignore the position that, as a matter of international law, the Committee is not competent to make binding determinations of whether the reservation is impermissible owing to incompatibility with the object and purpose of the Convention; and the State party's submissions that the reservation is, in any event, not incompatible with the object and purpose of the Convention.

**7. Additional comments of the author on admissibility**

7.1 By her submission of 9 August 2006, the author reiterates that her communication should not be declared inadmissible *ratione temporis*. She claims that the nationality law in force at the time of her son's birth in 1954 was discriminatory and that the current nationality law is discriminatory and that she is indeed still a victim.

7.2 As regards the exhaustion of all available domestic remedies, the author claims that, by making repeated applications for the citizenship of her eldest son since his birth through the British Consulate, the Home Office, correspondence with government officials and legal advisers, she has exhausted all those remedies available to her. Her complaint was even presented in the House of Lords debate as recently as 7 February 2006 and was firmly rejected. She further asserts that, in order to obtain the justice she seeks, the law has to be changed. She maintains that the avenue of judicial procedure is a long and complicated route and would present for her, at her age and with her resources, an enormous and impossible task far beyond her capabilities and energies; to challenge an Act of Parliament and all that it implies is an impossible mission for her to carry out. She states that she could easily exhaust what is left of her life seeking to exhaust all available domestic remedies and still arrive at nothing. She sought the help of the Committee for this reason.

7.3 As regards the provisions of the continuing consequences of section 5 of the 1948 Act being clearly covered by the reservation, the author finds it hard to imagine that any continuing violation of human rights can be maintained indefinitely on grounds that a reservation exists to allow it. She would like to assume that this was not the interpretation intended when the reservation was originally made.

7.4 The author argues that the State party is relying on semantics when it refers to the meaning of “temporary” and “transitional”. The author’s interpretation is that anything declared “temporary” and “transitional” will eventually be reviewed and changed. She claims that the State party took the route of solving the injustice by waiting it out until all the people who are suffering the injustice become irrelevant by death and, as a consequence, the problem is solved by its disappearance — rather than by extirpating the old remnant of medieval legislation which discriminated against old ladies and their adult children both in reference to men and to other women. She considers this route to be contrary to the object and purpose of the Convention as well as to official statements made publicly by the State party to the effect that discrimination has no place in British society.

7.5 The author submits that the Committee is competent to make binding determinations on whether the reservation entered by the State party upon ratification was impermissible and invalid and she also submits that the reservation is indeed incompatible with the object and purpose of the Convention.

## **8. Issues and proceedings before the Committee concerning admissibility**

8.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol.

8.2 In accordance with rule 66 of its rules of procedure, the Committee may decide to consider the question of admissibility and merits of a communication separately.

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

8.4 In accordance with article 4, paragraph 2 (e), of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the present

Protocol for the State party concerned unless those facts continued after that date. The Committee observes that the Optional Protocol entered into force for the United Kingdom of Great Britain and Northern Ireland on 17 March 2004. The Committee considers that the alleged discrimination complained of originated at the time of the birth of the author's eldest son (16 September 1954), well before the Optional Protocol or even the Convention were adopted. In those days, British nationality law did not grant women — the author included — the right to pass on British citizenship to their children, whereas their husbands, had they been British, would have had such a right. The Committee notes that on 7 February 1979 there was a change in government policy, which allowed applications by British women to have their minor children born on or after 7 February 1961 registered as British citizens. As a result of this change, the author acquired the right to pass on her nationality in 1980 through registration to her youngest son, who was born in 1966 and was still a minor, whereas she was unable to do so for her eldest son, who remained ineligible on account of his age. Bearing this in mind, the Committee considers that the relevant facts of the case, i.e., the alleged discrimination against the author as manifested in her inability, as compared to a British male citizen, to pass on her nationality to her eldest son (as opposed to any discrimination against her eldest son) stopped on the date on which her son achieved his majority, i.e., 16 September 1972. After that date, her son had a primary right to either retain his acquired nationality or to apply for the nationality of another State, subject to the conditions set by that State. More generally, such discrimination against the author and other women stopped on 7 February 1979 with the new government policy. Both dates precede the entry into force of the Optional Protocol. The Committee, therefore, concludes that the communication is inadmissible *ratione temporis*.

8.5 In accordance with article 4, paragraph 1 of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes the State party's unchallenged assertion that, at the relevant time, i.e., in 1954 or between 1954 and 1972, the author never made an application for registration of her eldest son as a British citizen under section 7(1) of the 1948 Act and that, had she done so, any refusal of such an application could have been challenged by way of judicial review in the High Court, which body exercised then and continues to exercise a supervisory jurisdiction over the exercise of statutory functions and/or the exercise of discretion by public authorities. Neither has the author ever since 1972 challenged in the High Court the continuing refusal of the British authorities to grant her eldest son British nationality. In line with a longstanding jurisprudence of other international human rights treaty bodies, in particular the Human Rights Committee,<sup>6</sup> the Committee on the Elimination of Discrimination against Women considers that authors of communications are required to raise in substance before domestic courts the alleged violation of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, which enables a State party to remedy an alleged violation before the same issue may be raised before the Committee. The Committee on the Elimination of Discrimination against Women for this reason finds the present communication inadmissible under article 4, paragraph 1, of the Optional Protocol.

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<sup>6</sup> See for example communication Nos. 222/1987 *M. K. v France*, 1356/2005 *Antonio Parra Corral v Spain* and 1420/2005 *Eugene Linder v Finland*.

8.6 The Committee sees no reason to find the communication inadmissible on any other grounds.

8.7 The Committee therefore decides:

(a) That the communication is inadmissible under article 4, paragraph 2 (e), of the Optional Protocol because the disputed facts occurred prior to the entry into force of the Optional Protocol for the State party and did not continue after that date and under article 4, paragraph 1, of the Optional Protocol because of the author's failure to exhaust domestic remedies;

(b) That this decision shall be communicated to the State party and to the author.

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