
Sandra Lovelace v. Canada, Communication No. R.6/24 (29 December 1977), U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981).

Submitted by: Sandra Lovelace

State party concerned: Canada

Date of communication: 29 December 1977

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights, [a/](#)

Meeting on 30 July 1981;

Having concluded its consideration of communication No. R.6/24 submitted to the Committee by Sandra Lovelace 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 authors of the communication and by the State party concerned;

adopts the following:

...

14. The rights under article 27 of the Covenant have to be secured to "persons belonging" to the minority. At present Sandra Lovelace does not qualify as an Indian under Canadian legislation. However, the Indian Act deals primarily with a number of privileges which, as stated above, do not as such come within the scope of the Covenant. Protection under the Indian Act and protection under article 27 of the Covenant therefore have to be distinguished. Persons who are born and brought up on a reserves who have kept ties with their community and wish to maintain these ties must normally be considered as belonging to that minority within the meaning of the Covenant. Since Sandra Lovelace is ethnically a Maliseet Indian and has only been absent from her home reserve for a few years during the existence of her marriage, she is, in the opinion of the Committee, entitled to be regarded as "belonging" to this minority and to claim the benefits of article 27 of the Covenant. The question whether these benefits have been denied to her, depends on how far they extend.

15. The right to live on a reserve is not as such guaranteed by article 27 of the Covenant. Moreover, the Indian Act does not interfere directly with the functions which are expressly mentioned in that article. However, in the opinion of the Committee the right of Sandra Lovelace to access to her native culture and language "in community with the other members" of her group, has in fact been, and continues to be interfered with, because there is no place outside the Tobique Reserve where such a community exists. On the other hand, not every interference can be regarded as a denial of rights within the meaning of article 27. Restrictions on the right to residence, by way of national legislation, cannot be ruled out under article 27 of the Covenant. This also follows from the restrictions to article 12 (1) of the Covenant set out in article 12 (3). The Committee recognizes the need to define the category of persons entitled to live on a reserve, for such purposes as those explained by the Government regarding protection of its resources and preservation of the identity of its people. However, the obligations which the Government has since undertaken under the Covenant must also be taken into account.

16. In this respect, the Committee is of the view that statutory restrictions affecting the right to residence on a reserve of a person belonging to the minority concerned, must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant, read as a whole. Article 27 must be construed and applied in the light of the other provisions mentioned above, such as articles 12, 17 and 23 in so far as they may be relevant to the particular case, and also the provisions against discrimination, such as articles 2, 3 and 26, as the case may be. It is not necessary, however, to determine in any general manner which restrictions may be justified under the Covenant, in particular as a result of marriage, because the circumstances are special in the present case.

17. The case of Sandra Lovelace should be considered in the light of the fact that her marriage to a non-Indian has broken up. It is natural that in such a situation she wishes to return to the environment in which she was born, particularly as after the dissolution of her marriage her main cultural attachment again was to the Maliseet band. Whatever may be the merits of the Indian Act in other respects, it does not seem to the Committee that to deny Sandra Lovelace the right to reside on the reserve is reasonable, or necessary to preserve the identity of the tribe. The Committee therefore concludes that to prevent her recognition as belonging to the band is an unjustifiable denial of her rights under article 27 of the Covenant, read in the context of the other provisions referred to.

18. In view of this finding, the Committee does not consider it necessary to examine whether the same facts also show separate breaches of the other rights invoked. The specific rights most directly applicable to her situation are those under article 27 of the Covenant. The rights to choose one's residence (article 12), and the rights aimed at protecting family life and children (articles 17, 23 and 24) are only indirectly at stake in the present case. The facts of the case do not seem to require further examination under those articles. The Committee's finding of a lack of a reasonable justification for the interference with Sandra Lovelace's rights under article 27 of the Covenant also makes it unnecessary, as suggested above (paragraph 12), to examine the general provisions against discrimination (articles 2, 3 and 26) in the context of the present case, and in particular to determine their bearing upon inequalities predating the coming into force of the Covenant for Canada.

19. Accordingly, the Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts of the present case, which establish that Sandra Lovelace has been denied the legal right to reside on the Tobique Reserve, disclose a breach by Canada of article 27 of the Covenant.

(Canada subsequently recognized the right of Lovelace to live on an Indian reserve, and amended the Indian Act.)