



91

Télégrammes : UNATIONS, GENÈVE

Télex : 28 93 96

Téléphone : 34 60 11 31 02 11

Palais des Nations

CH - 1211 GENÈVE 10

RÉF. N°:

(à rappeler dans la réponse) G/SO 215/51 CANA (8)
R.6/24

REGISTERED

22 August 1980

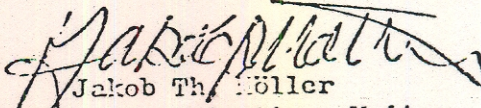
Dear Dr. Kinsella,
Dear Professor Fleming,

..... I have the honour to transmit to you herewith, in your capacities as legal representatives of Sandra Lovelace, the text of a decision adopted by the Human Rights Committee on 31 July 1980, concerning communication No. R.6/24, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. by her.

You will note, that the Committee sets out its considerations on a number of issues in paragraphs 7 to 9. In addition to inviting observations from the parties on these considerations, the Committee lists, in paragraph 10, a number of questions, on which it requests the parties to furnish replies, as appropriate. The wording "as appropriate" may be understood as meaning that, although neither party is precluded from replying to any question, the Committee would expect the State party to be in a better position to reply to some of them (i.e. questions (a) to (d), while Sandra Lovelace might deem it particularly pertinent to reply to questions (e) and (f).

Any observations or replies which Sandra Lovelace may wish to submit pursuant to the Committee's decision, should reach the Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within three months from the date of this letter, that is not later than by 22 November 1980.

Yours sincerely,


Jakob Th. Höller
Chief, Communications Unit
Division of Human Rights

Dr. Noel A. Kinsella
Chairman, Human Rights Commission
P.O. Box 6000
Fredericton, N.B.
Canada

cc.: Professor Fleming

INTERNATIONAL
COVENANT
CIVIL AND
POLITICAL RIGHTS



(92)

Distr.
RESTRICTED #/
CCPR/C/DR(I)/R.6/24
4 August 1980
Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Tenth session

DECISIONS

Communication No. R.6/24

Submitted by: Sandra Lovelace (represented by Professor Donald J. Fleming)

Alleged victim: The author

State party concerned: Canada

Date of communication: 29 December 1977 (date of initial letter)

Documentation references: Decisions - Human Rights Committee decision of
13 July 1978 (CCPR/C/DR(IV)/R.6/24)
Working Group decision of 6 April 1979
(CCPR/C/WG(VI)/D/R.6/24)
Human Rights Committee decision of
14 August 1979 (CCPR/C/DR(VII)/R.6/24)

Date of present decision: 31 July 1980

Interim decision

1. The author of the communication dated 29 December 1977 and supplemented by letters of 17 April 1978, 28 November 1979 and 20 June 1980, is a 32 years old Canadian citizen of Indian origin, living in Canada. She was born and registered as "Maliseet Indian" but has lost her rights and status as an Indian in accordance with Section 12(1)(b) of the Indian Act, after having married a non-Indian on 23 May 1970. Pointing out that an Indian man who marries a non-Indian woman does not lose his Indian status, she claims that the Act is discriminatory on the grounds of sex and contrary to articles 2 (1), 5, 23 (1) and (4), 26 and 27 of the Covenant. As to the admissibility of the communication, she contends that she was not required to exhaust local remedies since the Supreme Court of Canada, in *The Attorney General of Canada v. Jeannette Lovelace, Richard Isaac et al. v. Yvonne Bédard* [1974] S.C.R. 1349, held that section 12 (1)(b) does not contravene the Canadian Bill of Rights and was, therefore, fully operative.

* / All persons handling this document are requested to respect and observe confidential nature.

E.90-1640

2. By its decision of 18 July 1978 the Human Rights Committee transmitted the communication, under rule 91 of the provisional rules of procedure, to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. This request for information and observations was reiterated by a decision of the Committee's Working Group, dated 6 April 1979.

3. By its decision of 14 August 1979 the Human Rights Committee declared the communication admissible and requested the author of the communication to submit additional information concerning her age and her marriage, which had not been indicated in the original submission. At that time no information or observations had been received from the State party concerning the question of admissibility of the communication.

4. In its submission dated 26 September 1979 relating to the admissibility of the communication, the State party informed the Committee that it had no comments on that point to make. This fact, however, should not be considered as an admission of the merits of the allegations or the arguments of the author of the communication.

5. In its submission under article 4 (2) of the Optional Protocol concerning the merits of the case, dated 4 April 1980, the State party recognized that "many of the provisions of the Indian Act, including section 12 (1) (b), require serious reconsideration and reform". The Government further referred to an earlier public declaration to the effect that it intended to put a reform bill before the Canadian Parliament. It none the less stressed the necessity of the Indian Act as an instrument designed to protect the Indian minority in accordance with article 27 of the Covenant. A definition of the Indian was inevitable in view of the special privileges granted to the Indian communities, in particular their right to occupy reserve lands. Traditionally, patrilineal family relationships were taken into account for determining legal claims. Since, additionally, in the farming societies of the 19th Century, reserve land was felt to be more threatened by non-Indian men than by non-Indian women, legal enactments as from 1869 provided that an Indian woman who married a non-Indian man would lose her status as an Indian. These reasons were still valid. A change in the law could only be sought in consultation with the Indians themselves who, however, were divided on the issue of equal rights. The Indian community should not be endangered by legislative changes. Therefore, although the Government was in principle committed to amending section 12 (1)(b) of the Indian Act, no quick and immediate legislative action could be expected.

6. The author of the communication, in her submission of 20 June 1980, disputes that legal relationships within Indian families were traditionally patrilineal in nature. Her view is that the reasons put forward by the Canadian Government do not justify the discrimination against Indian women in section 12 (1)(b) of the Indian Act. She concludes that the Human Rights Committee should recommend the State party to amend the provisions in question.

7. The Human Rights Committee recognizes that the relevant provision of the Indian Act, although not legally restricting the right to marry as laid down in article 23 (2) of the Covenant, entails serious disadvantages on the part of the Indian woman who wants to marry a non-Indian man and may in fact cause her to live with her fiancé in an unmarried relationship. There is thus a question as to whether the obligation of the State party under article 23 of the Covenant with regard to the protection of the family is complied with. Moreover, since only Indian women and not Indian men are subject to these disadvantages under the Act,

the question arises whether Canada complies with its commitment under articles 2 and 3 to secure the rights under the Covenant without discrimination as to sex. On the other hand, article 27 of the Covenant requires States parties to accord protection to ethnic and linguistic minorities and the Committee must give due weight to this obligation. To enable it to form an opinion on these issues, it would assist the Committee to have certain additional observations and information.

8. In regard to the present communication, however, the Human Rights Committee must also take into account that the Covenant has entered into force in respect of Canada on 19 August 1976, several years after the marriage of Mrs. Lovelace. She consequently lost her status as an Indian at a time when Canada was not bound by the Covenant. The Human Rights Committee has held that it is empowered to consider a communication when the measures complained of, although they occurred before the entry into force of the Covenant, continued to have effects which themselves constitute a violation of the Covenant after that date. It is therefore relevant for the Committee to know whether the marriage of Mrs. Lovelace in 1970 has had any such effects.

9. Since the author of the communication is ethnically an Indian, some persisting effects of her loss of legal status as an Indian may, as from the entry into force of the Covenant for Canada, amount to a violation of rights protected by the Covenant. The Human Rights Committee has been informed that persons in her situation are denied the right to live on an Indian reserve with resultant separation from the Indian community and members of their families. Such prohibition may affect rights which the Covenant guarantees in articles 12 (1), 17, 23 (1), 24 and 27. There may be other such effects of her loss of status.

10. The Human Rights Committee, accordingly, invites the observations of the parties on the above considerations and requests them, as appropriate, to furnish replies to the following questions:

(a) How many Indian women marry non-Indian men on an average each year? Statistical data for the last twenty years should be provided.

(b) What is the legal basis of a prohibition to live on a reserve? Is it a direct result of the loss of Indian status or does it derive from a discretionary decision of the Council of the community concerned?

(c) What reasons are adduced to justify the denial of the right of abode on a reserve?

(d) What legislative proposals are under consideration for ensuring full equality between the sexes with regard to Indian status? How would they affect the position of Mrs. Lovelace? How soon can it be expected that legislation will be introduced?

(e) What was Mrs. Lovelace's place of abode prior to her marriage? Was she that time living with other members of her family? Was she denied the right to reside on a reserve in consequence of her marriage?

(f) What other persisting effects of Mrs. Lovelace's loss of status are there which may be relevant to any of the rights protected by the Covenant?

1. The replies of the parties should reach the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, not later than three months from the date of the transmittal of this decision to them. Any reply received from either parties shall be transmitted to the other party.

2. This decision shall be communicated to the State party and to the author of the communication.