

## HUMAN RIGHTS COMMITTEE

### Pinkney v. Canada

Communication No. 27/1978

2 April 1980

### ADMISSIBILITY

*Submitted by:* Larry James Pinkney on 25 November 1977

*Alleged victim:* The author

*State party:* Canada

*Date of decision on admissibility:* 2 April 1980 (ninth session)

### Decision on Admissibility

1. The author of the communication (initial letter dated 25 November 1977 and a further letter dated 7 April 1978) is a citizen of the United States of America who is serving a prison sentence in Canada. He describes himself as a black political activist, having been involved in the activities of several political organizations since 1967 (Black Panther Party (1967-1968), Black National Draft Resistance League (Chairman) (1969-1970), San Francisco Black Caucus (Co-Chairman) (1970-1973), Minister of the Interior for the Republic of New Africa (1970-1972) under the name of Makua Atana and, since 1974, Chairman of the Central Committee of the Black National Independence Party). He entered Canada as a visitor in September 1975. In May 1976 he was arrested by police authorities in Vancouver, British Columbia, on charges under the Canadian Criminal Code and remanded to the Lower Mainland Regional Correction Centre at Oakalla, British Columbia, pending trial on certain criminal charges. Because of his arrest, Mr. Pinkney's continued presence in Canada came to the attention of immigration officials and consequently, during the period that he was incarcerated at the Correction Centre, proceedings were taken under the Immigration Act to determine whether he was lawfully in Canada. These proceedings took place during the period between 21 May 1976 and 10 November 1976 when an order of deportation was issued against Mr. Pinkney. Subsequently, he was convicted of the criminal charges against him and sentenced to a term of five years' imprisonment.

2. By its decision of 18 July 1978 the Human Rights Committee transmitted Mr. Pinkney's 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.

3. The Committee also communicated its decision to Mr. Pinkney.

4. The State party's submissions on the question of admissibility were contained in letters of 18 June 1979 and 10 January 1980 and further comments from Mr. Pinkney were contained in letters of 11 and 15 July 1979 and 21 and 22 February 1980.

5. Mr. Pinkney claims (a) that he is the victim of a mistrial in Canada in regard to the criminal charges brought against him, (b) that he has been prevented from appealing against the deportation order, which is due to come into effect upon his release from prison, and (c) that he has been subjected to ill-treatment because of his race. He alleges that, in consequence, the State party has violated articles 10 (1) and (2) (a), 13, 14 (1) and (3) (b), 16 and 17 (1) of the International Covenant on Civil and Political Rights.

(a) The claims concerning the alleged mistrial

6. Mr. Pinkney's allegations relating to these claims are as follows:

Prior to his arrest in May 1976, he had spent over three months in Vancouver compiling specific information on alleged smuggling activities of certain East Indian Asian immigrants in Canada, involving smuggling out of Africa into Europe, Canada and the United States, with the complicity of Canadian immigration officials. He maintains that he was doing this work on behalf of the Governing Central Committee of the Black National Independence Party (BNIP) with a view to putting an end to these illegal activities, which he contends were to the detriment of the economy of African countries. The author further indicates that, during the period prior to his arrest, he managed to establish contact with a relative of the persons involved in the smuggling of diamonds and large sums of money from Kenya, Tanzania, Uganda and Zaire into Canada. He states that the relative revealed to him many details about her uncle's smuggling activities, that he recorded this information on tape, that he made copies of the letters showing dates and amounts of transactions, names of people involved and other details and that he placed this material in a brief-case kept in a 24-hour public locker. He asserts that in one of the letters which was copied reference was made to a gift in cash to certain Canadian immigration officials for their assistance and also to the need to pay more money to a BOAC airline pilot for his help. The author maintains that he periodically informed the Central Committee of the BNIP and a security official at the Kenyan Embassy in Washington of his investigation by telephone and that he recorded these conversations and placed the tapes in the briefcase. The author maintains that after he was arrested, in May 1976, the brief-case was discovered and confiscated by the police and that the material necessary for his defense mysteriously disappeared before his trial. He states that these facts were ignored by the trial court, that he was accused of having used the information in his possession with a view to obtaining money from the persons allegedly responsible for the smuggling, and that he was convicted on the basis of evidence which had been tampered with and distorted but which was nevertheless presented by the police and crown attorney.

7. From the information submitted by the parties, the following facts concerning these claims have been established:

Larry James Pinkney was convicted by the trial court on a charge of extortion on 9 December 1976. Sentence of five years' imprisonment was pronounced on 7 January 1977. On 8 February 1977, Mr. Pinkney sought leave to appeal from his conviction and from his sentence to the British Columbia Court of Appeal. His appeal, however, was not heard until 34 months later. This delay, which the government of British Columbia described as "unusual and unsatisfactory", was due to the fact that the trial transcripts were not produced until June 1979 after the application for leave to appeal was made. Mr. Pinkney alleges that the delay in the hearing, due to the lack of the trial transcripts, was a deliberate attempt by the State party to block the exercise of his right of appeal. The State party rejects this allegation and submits that, notwithstanding the efforts of officials of the Ministry of the Attorney-General of British Columbia to hasten the production of the trial transcripts, they were not completed until June 1979, "because of various administrative mishaps in the Official Reporters' Office". On 6 December 1979, that is 34 months after his application for leave to appeal, the British Columbia Court of Appeal heard the application, granted leave to appeal and on that same day, after hearing Mr. Pinkney's legal counsel, (a) dismissed the appeal against conviction, which had been based on the ground that Mr. Pinkney had not been able to defend himself properly, because of the inability of the authorities to produce the missing briefcase and (b) adjourned the appeal against sentence sine die, to be heard at a time convenient for Mr. Pinkney's counsel.

8. According to the judgement of the Court of Appeal dismissing the appeal against conviction, Mr. Pinkney, following his arrest, had directed police officers to a locker in a bus depot in Vancouver, from which they took, in his presence, two briefcases containing documents belonging to him. The State party contended that the contents of these two briefcases were not the subject of the controversy that arose, during the trial, when Mr. Pinkney asserted that a third briefcase has been kept at his residence, containing the documents which he maintained were of relevance to his defense. The authorities, however, disavowed any knowledge of the existence of a third brief-case. The Court of Appeal concluded that Mr. Pinkney's submissions concerning the third brief-case were too vague to support his contention that it had existed.

9. With regard to these claims, the State party has argued that the author of the communication has not exhausted domestic remedies and that his claims in this respect should be declared inadmissible pursuant to article 5 (2) (b) of the Optional Protocol. It is submitted by the State party (a) that, if Mr. Pinkney continues to feel aggrieved by this most recent decision, he can, with leave of that Court, take a further appeal, on any question of law, to the Supreme Court of Canada "within twenty-one days after the judgement appealed from is pronounced or within such extended times as the Supreme Court or a judge thereof may, for special reasons allow" (Criminal Code, R.S.C. 1970, c. C-34, s.618 (b)) and that, as of the date of the State party's latest submission (of 10 January 1980), Mr. Pinkney had neither sought leave to appeal nor an extension of the time allowed for appeal; and (b) that his appeal against sentence, a procedure of secondary importance in the circumstances of the communication, has been adjourned sine die and will be brought on at some time convenient

to his counsel.

10. The Human Rights Committee finds that Mr. Pinkney's complaints concerning his trial and conviction and the dismissal of his appeal against conviction (his alleged difficulties in producing evidence to prove his innocence and the delay of more than two years in producing the trial transcripts) appear to raise questions of fact rather than law. The Committee therefore concludes that in respect of these complaints there is no further domestic remedy available to Mr. Pinkney which he should exhaust.

11. The Committee has also to consider whether Mr. Pinkney's complaints referred to above are compatible with the provisions of the Covenant and in particular with article 14 (1) and (3) (b) which have been invoked by him. The Committee observes that allegations that a domestic court has committed errors of fact or law do not in themselves raise questions of violation of the Covenant unless it also appears that some of the requirements of article 14 may not have been complied with. Mr. Pinkney's complaints relating to his alleged difficulties in producing evidence in his defense and also the delay in producing the trial transcripts do appear to raise such issues. In addition to the provisions invoked by Mr. Pinkney, it may be necessary to consider the possible relevance of article 14 (3) (c) and (5).

(b) The claims concerning the deportation order

12. It appears that Mr. Pinkney's continued presence in Canada came to the attention of immigration officials after he was arrested in May 1976. Proceedings against him were initiated under the Immigration Act on 21 May 1976 and, on 10 November 1976, the Special Inquiry Officer, having legal authority under the Act to do so, issued an order of deportation against Mr. Pinkney, having determined that he was present in Canada contrary to the Immigration Act and therefore not "lawfully" in Canada.

13. Mr. Pinkney alleges that the proceedings before the Special Inquiry Officer were not impartial, that he was denied a fair hearing, that the submission that he considered himself a political refugee was not given due consideration and that the Special Inquiry Office failed to inform him of his right to appeal against the deportation order to the Immigration Appeal Board and thus in effect deprived him of the right to have his case reviewed within the time-limit established by law. He alleges that in consequence the State party has violated articles 13 and 14 (1) and (3) (b) of the Covenant.

14. The State party has objected to the admissibility of these claims on the grounds that article 13 of the Covenant is inapplicable because it applies only to "an alien lawfully in the territory of a State Party", that article 14 (3) is not applicable because it applies only to "the determination of any criminal charge" and therefore cannot be invoked in relation to deportation proceedings, and furthermore that Mr. Pinkney failed to exhaust domestic remedies in that he did not appeal against the deportation order to the Immigration Appeal Board within the time-limit established by law and, in so far as his complaints that the Special Inquiry Officer had not been impartial or had failed to give him a fair hearing were concerned, he had not raised these for review by the Federal Court of Canada, which, under the Federal Court Act, would quash a decision or order made by an officer in breach of either

of these principles. The State party has pointed out that Mr. Pinkney was at all relevant times represented by legal counsel whose responsibility it was to advise him of his rights of appeal and review.

15. The Committee observes that Mr. Pinkney did not avail himself in time of his right of appeal against the deportation order and the reasons which he gives for his failure to do so did not, in the circumstances of the case, absolve him from exhausting this remedy. Nor has he availed himself of the right to have his case reviewed by the Federal Court of Canada in so far as he complains of partiality and unfairness in the deportation proceedings.

16. These claims must therefore be considered inadmissible under article 5 (2) (b) of the Optional Protocol, because domestic remedies have not been exhausted.

(c) The claims concerning the alleged ill-treatment

17. The author of the communication alleges that he has been subjected to continual racial insults and ill-treatment in prison. He claims, In particular, (a) that prison guards insulted him, humiliated him and physically ill-treated him because of his race, in violation of articles 10 (1) and 17 (1) of the Covenant, and (b) that, during his pre-trial detention, he was not segregated from convicted persons, that his correspondence was arbitrarily interfered with and that his treatment as an unconvicted person was far worse than that given to convicted persons, in violation of articles 10 (1) and (2) (a) and 17 (1) of the Covenant.

18. The State party asserts that the Corrections Branch of the Department of the Attorney-General of British Columbia undertook two separate investigations of the allegations of racial insults and on both occasions found no apparent evidence to support his claims. Moreover, the State party maintains that these allegations of the author appear in the context of sweeping and numerous accusations of wrong doing by various federal and provincial government officials and by the courts in Canada. It therefore submits that these allegations should be considered to be "an abuse of the right of submission" and declared inadmissible under article 3 of the Optional Protocol. In so far as the communication alleges that before conviction Mr. Pinkney was housed in the same wing of the Lower Mainland Regional Correction Centre as convicted persons and that his mail had been interfered with, these allegations were not brought to the attention of the appropriate authority, namely the Corrections Branch of the British Columbia Ministry of the Attorney-General, in writing by or on behalf of Mr. Pinkney (though he made other complaints and therefore was aware of the procedure) until the Branch became aware of his letter to the Human Rights Committee on 7 April 1978. The State party therefore submits that Mr. Pinkney failed in this respect to exhaust all available domestic remedies, before submitting his claims to the Committee. Mr. Pinkney, however, has pointed out that he was informed that an investigation had been made into his complaints by the Attorney-General's Office and that his charges were unsubstantiated.

19. The Human Rights Committee does not accept the State party's argument that the author's complaint concerning alleged racial insults should be declared inadmissible as an abuse of the right of submission. Moreover, his complaints now appear to have been

investigated by the appropriate authorities and dismissed, and consequently it cannot be argued that domestic remedies have not been exhausted.

20. The Committee therefore finds that it is not barred, on any of the grounds set out in the Optional Protocol, from considering these complaints on the merits, in so far as they relate to events taking place on or after 19 August 1976 (the date on which the Covenant and the Optional Protocol entered into force for Canada).

The Human Rights Committee therefore decides:

1. That the communication is admissible in so far as it relates to Mr. Pinkney's trial and conviction on the charge of extortion;
2. That the communication is inadmissible in so far as it relates to the deportation proceedings and the deportation order issued against Mr. Pinkney;
3. That the communication is admissible in so far as it relates to Mr. Pinkney's treatment at the Lower Mainland Regional Correction Centre on or after 19 August 1976;
4. That, in accordance with 4 (2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matters referred to in (a) and (c) above and the remedies, if any, that may have been taken by it. The State party is requested in this connection to include details of any investigations which the Canadian authorities have made into the matters complained of by Mr. Pinkney;
5. That any explanations or statements received from the State party shall be communicated by the Secretary-General to the author of the communication, under rule 93 (3) of the provisional rules of procedure of the Committee, with the request that any comments which the author may wish to submit thereon should reach the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;
6. That this decision be communicated to the State party and the author of the communication.