HUMAN RIGHTS COMMITTEE

Pinkney v. Canada

Communication No. R.7/27

29 October 1981

VIEWS

Submitted by: Larry James Pinkney

Alleged victim: the author

State party concerned: Canada

Date of communication: 25 November 1977 (date of initial letter)

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 29 October 1981,

Having concluded its consideration of communication R.7/27 submitted to the Committee by Larry James Pinkney 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 by the State party concerned,

Adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 25 November 1977 and a further letter dated 7 April 1978 as well as numerous further letters received from the author during the course of the proceedings) 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 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. On 10 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 his trial on certain criminal charges. Because of his arrest his continued presence in Canada came to the attention of immigration officials and, consequently Curing the period when be was incarcerated at the Correction Centre, proceeding s 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 him. On 9 December 1976 he was convicted by the County Court of British Columbia of the charge of extortion and on 7 January 1977 he was sentenced to a term of five years' imprisonment. On 8 February 1977, he sought leave to appeal against his conviction and sentence to the British Columbia C~urt of Appeal. He was transferred to the British Columbia Penitentiary on 11 February 1977. On 6 December 1979 the Court of Appeal dismissed his appeal against conviction and adjourned his appeal against sentence sine die.

2. Mr. Pinkney claims (a) that he had been denied a fair hearing and review of his case in regard to the deportation order, which is Cue to come into effect on his release from prison, (b) that he is the victim of a mistrial in regard to the criminal charges brought against him, and (c) that he has been subjected to wrongful treatment while in detention. 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.

3. 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.

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

5. 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 and22 February 1980.

6. On 2 April 1980 the Human Rights Committee decided:

(a) That the communication was inadmissible in so far as it related to the deportation proceedings and the deportation order issued against Mr. Pinkney;

(b) That the communication was admissible in so far as it related to Mr. Pinkney's trial and conviction on the charge of extortion;

(c) That the communication was admissible in so far as it related to Mr. Pinkney's treatment at the Lower Mainland Regional Correction Centre on or after 19 August 1976.

7. In its observations under article 4 (2) of the Optional Protocol, dated 21 October 1980, the State party submits that there is no merit to the author's allegations which were found admissible by the Committee and that they should therefore be dismissed. Further submissions regarding the admissibility and merits of the case were received in a note of 22 July 1980 from the State party and in letters of 10 and 22 December 1980 and 30 April, 24 June, 27 August and 18 September 1981 from the author of the communication and his lawyer.

(a) The claims concerning the deportation order

8. The Human Rights Committee, having examined the further submissions regarding the admissibility of the communication, has found no grounds to reconsider its decision of 2 April 1980.

(b) The claims concerning the alleged mistrial

9. Mr. Pinkney alleges that prior to his arrest in May 1976, he has 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 comlicity 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 (BNIC) 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 had 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 these smuggling activities, that he recorded this information on tape, that he made copies of the letters showing dates ant amounts of transactions, names of people involved and other details and that he placed this material in a briefcase 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 offices for their assistance and also to the necessity to pay more money to a BOAC airline pilot for his help. The author maintains that he periodically informed by telephone the Central Committee of the BNIC and a security official at the Kenyan Embassy in Washington of his investigation 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 briefcase was discovered and confiscated by the police and that the material necessary for his defence mysteriously disappeared before his trial. He alleges 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, that evidence that he had no intention of committing extortion was deliberately withheld, 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.

10. From the information submitted to the Committee it appears that Mr. Pinkney was convicted by the County Court of British Columbia on a charge of extortion on 9 December

1976. The sentence of five years' imprisonment was pronounced on 7 January 1977. On 8 February 1977, he sought leave to appeal against his conviction and his sentence to the British Columbia Court of Appeal. He argued that he had not been able to make full answer and defence to the charge of extortion before the trial court because of alleged inability of the authorities to produce the missing briefcase. 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. 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 leave to appeal-was applied for, the British Columbia Court of Appeal heard the application, granted leave to appeal and on the same day, after hearing Mr. Pinkney's legal counsel (i) dismissed the appeal against conviction, and (ii) adjourned the appeal against sentence sine die, to be heard at a time convenient for Mr. Pinkney's counsel.

11. Mr. Pinkney claims violations of article 14 (1) and (3) (b) of the Covenant in that he was not given a fair hearing or adequate time and facilities for the preparation of his defence since he was denied the right to produce the documents and tapes allegedly proving his innocence. He also claims that the long delay in hearing his appeal has resulted in violations of article 14 (3) (c) and (5).

12. As to Mr. Pinkney's claim that he was denied a fair trial because evidence was withheld which would have proven that he had no intent to commit the crime of extortion, the State party in its observations of 21 October 1980 under article 4 (2) of the Optional Protocol makes the following submission:

"Mr. Pinkney was charged under section 305 of the Criminal Code:

'305.(1) Everyone who, without reasonable justification or excuse and with intent to extort or gain anything by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done is guilty of an indictable offence and is liable to imprisonment for 14 years.

'(2) A threat to institute civil proceedings is not a threat for the purposes of this section."

"In order to prove that he had committed this offence, the Crown had to prove beyond reasonable doubt:

(1) That the accused used threats to induce the doing of something;

(2) That he did so with intent to extort or gain something, and

(3) That he did so without reasonable justification or excuse.

"In the present case the Crown met this burden of proof. Using tape recordings (and transcripts thereof) of two telephone conversations between Mr. Pinkney and his intended victims, it showed that he threatened to turn over the content of a stolen file containing information on the smuggling of money from Kenya to Canada as well as an application requesting that family allowance payments be made to a person who was not entitled to receive them under Canadian law to Canadian and Kenyan authorities unless he was paid the sum of $100,000, later reduced to $50,000. His Honour Judge Mackinnon, of the County of vancouver, who presided at Mr. Pinkney's trial, indicated that, in the absence of any explanation, this evidence (which, it should be noted, Mr. Pinkney agreed with) was sufficient to support a conviction. Although Mr. Pinkney contended that when he threatened his intended victims he had no intention to extort money from them, but merely wanted to substantiate the information found in the above-mentioned file in order to maintain his reputation as a reliable, informer with the Kenyan Embassy in the United States, the trial judge, after a study of the evidence adduced by both the Crown and the accused, including testimony by the accused, concluded that the communicant did intend to extort money. The trial judge noted that in a written statement dated 7 May 1976 which he had made to the police after his arrest, Mr. Pinkney made absolutely no mention of Kenya, smuggling activities or his attempt to verify information, but rather referred to the attempted extortions as a "business deal". The judge concluded that this "can only be interpreted in this context as an exchange of the file for money" and that he Could "put no other rational interpretation on this statement written by Pinkney himself ...". Furthermore, he indicated that additional evidence of Mr. Pinkney's intention could be found in various papers found in his apartment and largely in his handwriting. On these papers were written specific ideas concerning threats, plans to pick up the money and other matters which Mr. Pinkney denied having considered.

"At the communicant's trial, the Crown showed that he had intended to extort money. To this effect, the 7 May 1976 statement which Mr. Pinkney made to the police and the various papers found in his apartment were particularly decisive. In the face of such evidence, the defence of the accused failed. It is doubtful whether the alleged missing evidence would have been of any assistance to Mr. Pinkney. The trial judge was made aware, in the course of pleadings of the smuggling activities of Mr. Pinkney's intended victims. He also accepted as a fact that Mr. Pinkney was in contact with a representative of the Kenyan Embassy in the United States and that he had sent and intended to continue sending information to the Embassy. Part, if not all of the evidence which the communicant alleges to be missing was, therefore, available at trial. Quite evidently, part of this evidence was not pertinent: evidence of crimes which might have been committed by other individuals in Canada or abroad does not assist Mr. Pinkney in proving that he had no intention of committing an offence in Canada. The rest had some relevance to the accused defence but did not succeed in creating in the mind of the presiding judge a reasonable doubt as to the absence of criminal intent on the part of the accused. Considering the overwhelming proof of criminal intent adduced by the Crown, this is not surprising."

13. The State party also relies on the consideration of the Ease by the Court of Appeal in

dismissing the appeal against conviction. The Court of Appeal had gone through the information and arguments about, the allegedly missing evidence. It held in this respect that "if this matter had been as consequential as it is now suggested it was, much more strenuous efforts would have been taken at every stage of the proceedings of trial to endeavour to resolve the issue of the missing briefcase" and that the information put before it was "altogether too vague to support the submissions now advanced on behalf of the applicant". The Government adds: :In other words, Mr. Pinkney was unable to convince the Court (of Appeal) that the allegedly missing evidence existed, that it had been withheld by the Crown and was in any way relevant."

14. The Government's view is that the facts show:

(a) That in one form or another most if not all if the allegedly missing evidence was put before the trial judge and found not to be relevant or pertinent;

(b) That the communicant failed to exercise due diligence in order to obtain the allegedly missing evidence, evidence which he described as vital to his case;

(c) That he failed to exhaust all local remedies when he failed to ask the Supreme Court of Canada to grant him leave in order to ascertain whether in the present case there had occurred a breach of the rights to a full defence and to a fair hearing which are protected by the Criminal Code and the Canadian Bill of Rights.

15. Concerning the issue of the length of the proceedings before the Court of Appeal due to the delay in the production of the transcripts of the trial, the State party denies any allegation of wrongdoing, negligence or carelessness on the part of the Ministry of the Attorney-General. It acknowledges that the delay was due to "administrative mishaps in the Official Reporter's Office", but submits that responsibility must nevertheless rest with Mr. Pinkney in that he failed to seek an order from the Court of Appeal requiring production of the transcripts, as he was entitled to do under the Criminal Code and the Rules of the British Columbia Supreme Court.

16. In his reply of 22 December 1980, Mr. Pinkney's lawyer submits the following:

"(i) Missing evidence

"The following is a summary of evidence presented at Mr. Pinkney's trial:

"Mr. Pinkney was arrested by detectives and members of the Vancouver City Police at his apartment in the city of Vancouver on 7 May 1976. Just prior to that arrest, Vancouver police detectives conducted a search of that apartment and seized a large number of documents and other items. Subsequent to Mr. Pinkney's arrest, two black briefcases belonging to him were seized as well by police from a bus depot locker. Mr. Pinkney testified that he had been in possession of a grey briefcase in addition to the two black briefcases prior to his arrest. The briefcase that he alleges contained the materials vital to his defence was one of the black briefcases seized from the bus depot locker. He testified further

that only the grey briefcase and one of the black briefcases had ever been returned to him. Detective Hope testified that he took two black briefcases to the police station in Vancouver, where the contents were cursorily examined. Detective Hope further testified that no list of the contents of those briefcases was ever made, and also testified that while he did not personally recall seeing any grey briefcase at the apartment of Mr. Pinkney and that he did not himself seize such a briefcase, other members of the police were present at that apartment and may have seized such a briefcase.

"There was evidence led at trial that indicated that both of the black briefcases were at one point in time given into the custody of the Royal Canadian Mounted Police, that the contents were photocopied by the R.C.M.P., and that both briefcases were then returned to Vancouver City Police. There was as well testimony that other agencies had shown interest in the contents of those briefcases, including the United States Federal Bureau of Investigation, Canadian Immigration, and the Royal Canadian Mounted Police Subversive Section.

"While Vancouver police records indicated that both black briefcases had been turned over to Mr. Pinkney's lawyer acting at that time, Ms. Patricia Connors, Ms. Connors herself gave evidence at trial indicating that she had recovered one grey briefcase and one black briefcase, and that when she signed the police record indicating that she had picked up two black briefcases, she had not carefully examined it and had signed it carelessly. Records from the Lower Mainland Regional Correctional Centre (Oakalla) the prison where Mr. Pinkney was detained pending his trial, indicated that one grey briefcase and one black briefcase were received by them for Mr. Pinkney.

"Mr. Pinkney testified of extensive attempts made by himself and by others on his behalf to recover the remaining black briefcase from the police, all of which were unsuccessful. He testified that these attempts commenced shortly after his arrest and well before his trial, and included an attempt to obtain the briefcase by order of a provincial court judge at the time of Mr. Pinkney's preliminary hearing and an attempt to seek the assistance of the Federal Minister of Justice Basford via letter.

"The foregoing summary of evidence led at Mr. Pinkney's trial is substantiated by the transcripts of those proceedings. Those transcripts are in the possession of ourselves as well as of representatives of the Province of British Columbia. They comprise-some nine volumes, and can be made available to the Committee if requested.

"This summary of evidence is submitted at this time in response to the rather minimal summary provided in the State party's submission at pages 7 and 8. In addition, it is clear that counsel for Mr. Pinkney at trial sought an adjournment of that trial sine die on the basis of the evidence adduced concerning the briefcases and their contents, on the grounds that until the missing briefcase and contents were produced, Mr. Pinkney's right to make full answer and defence was imparied. The trial judge refused this application.

"(a) The State party argues that "most if not all of the allegedly missing evidence was put before the trial judge and found not to be relevant or pertinent".

"It is submitted on behalf of Mr. Pinkney that there is no basis to this submission. While mention of the contents of the missing briefcase was made at trial by Mr. Pinkney, this is hardly analogous to putting this evidence before the trial judge. The only issue at trial was whether Mr. Pinkney had the intent to extort money. His defence was that he was for political reasons testing the veractiy of information he had obtained, and that his method was to request money in return for the information. Clearly, the political motivations of Mr. Pinkney were extremely relevant, and if further evidence corroborating his evidence of political activity could have been produced, that may have been crucial. It is impossible to determine at this juncture what effect the presentation of all of Mr. Pinkney's evidence might have had on the trial 3udge's finding of credibility.

"(b) The State party further argues that Mr. Pinkney 'failed to exercise due Oilingonce in order to obtain the allegedly missing evidence'.

"It is respectfully submitted that this submission also is completely without merit and flies in the face of the evidence led at Mr. Pinkney's trial of the extensive efforts made by him to recover the missing evidence. It must as well be noted that Mr. Pinkney alleged that the missing briefcase was in the hands the police, and that from the date of his arrest until his trial, he was being held in custody at the Oakalla prison on remand. It is submitted that it is remarkable that he managed to make the efforts that he did to recover the missing evidence, and further that the evidence of the attempts made corroborate his allegations as to the vital nature of the missing evidence. The evidence led at trial indicating that the Vancouver police turned the black briefcase in question over to the Royal Canadian Mounted Police for examination and indicating the interest shown by other agencies, including Canadian Immigration and the American F.B.I. further corroborates Mr. Pinkney's allegations concerning the nature of the evidence contained in the missing briefcase."

17. It is further submitted on Mr. Pinkney's behalf that the Government of British Columbia must be held responsible for delay resulting from mishaps in producing the trial transcripts and that the Court of Appeal itself, being aware of the delay, should also of its own motion have taken steps to expedite their production.

18. In its decision of 2 April 1980, the Human Rights Committee observed that allegations that a domestic court had committed errors of fact or law did not in themselves raise questions of violation of the Covenant unless it appeared that some of the requirements of article 14 might not have been complied with; Mr. Pinkney's complaints relating to his alleged difficulties in producing evidence in his defence and also the delay in producing the trial transcripts did appear to raise such issues.

19. The question now before the Committee is whether any facts have been shown which affected Mr. Pinkney's right to a fair hearing and a proper conduct of his defence. The Committee has carefully considered all the information before it in connexion with his trial and subsequent appeal against conviction and sentence.

20. As regards the allegedly missing evidence, it has been established that the question whether it existed, and, if so, whether it would be relevant, was considered both by the trial

judge and by the Court of appeal. It is true that in the absence of the allegedly missing material itself, the Court's findings depended on an assessment of the information before them. However, it is not the function of the Committee to examine whether this assessment by the Courts was based on errors of fact, or to review their application of Canadian law, but only to determine whether it was made in circumstances indicating that the provisions of the Covenant were not observed.

21. The Committee recalls that Mr. Pinkney was unable to convince the courts that such evidence would in any way have assisted his defence. Such a point is normally one on which the assessment of the domestic courts must be decisive. But in any event the Committee has not, in all the information before it, found any support for the allegation that material evidence was withheld by the Canadian authorities, depriving Mr. Pinkney of a fair hearing or adequate facilities for his defence.

22. As regards the next aspect, however, the Committee, having considered all the information relating to the delay of two and a half years in the production of the transcripts of the trial for the purposes of the appeal, considers that the authorities of British Columbia must be considered objectively responsible. Even in the particular circumstances this delay appears excessive and might have been prejudicial to the effectiveness of the right to appeal. At the same time, however, the Committee has to take note of the position of the Government that the Supreme Court of Canada would have been competent to examine these complaints.

This remedy, nevertheless, does not seem likely to have been effective for the purpose of avoiding delay. The Committee observes on this point that the right under Article 14 (3) (c) to be tried without undue delay should be applied in conjunction with the right under Article 14 (5) to review by a higher tribunal, and that consequently there was in this case a violation of both of these provisions taken together.

(c) <u>The claims concerning alleged wrongful treatment while in detention</u>

23. Mr. Pinkney alleges that he has been subjected to continual racial insults and ill-treatment in prison. He claims, in particular, (i) 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 (ii) 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.

24. The State party asserted 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 Mr. Pinkney's claims. Moreover, the State party maintained that these allegations of the author appeared in the context of sweeping and numerous accusations of wrongdoing by various federal and provincial government officials and by the courts in Canada. It therefore submitted 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 alleged 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, the State party claimed that these allegations were not brought in writing to the attention of the appropriate authority, namely the Corrections Branch of the British Columbia Ministry of the Attorney General, 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 of 7 April 1978 to the Human Rights Committee. The State party therefore submitted that Mr. Pinkney had failed in this respect to exhaust all available domestic remedies before submitting his claims to the Committee. Mr. Pinkney, however, pointed out that he was informed that an investigation had been made into him complaints by the Attorney General's Office and that his charges were unsubstantiated.

25. The Human Rights Committee did 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, the Committee was of the view that the author's complaints appeared to have been investigated by the appropriate authorities and dismissed and consequently it cannot be argued that domestic remedies had not been exhausted. The Committee therefore found that it was 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 related 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).

26. According to the information submitted to the Committee by the State party, Mr. Pinkney's allegations that he was insulted, humiliated and physically ill-treated because of his race by prison guards while he was detained in the Lower Mainland Regional Correction Centre were the subject of inquiries on three occasions by the Inspection and Standards Division of the British Columbia Correction Service. The first of these was in February 1977 following a complaint by Mr. Pinkney to the British Columbia Human Rights Commission when an inspector of the Division interviewed him but concluded that Mr. Pinkney was unable to furnish sufficiently specific information to substantiate his complaints. The second and third were in 1978 following Mr. Pinkney's communication to the Human Rights Committee when he was not interviewed personally as he had by then left the Lower Mainland Regional Correction Centre but his lawyers were contacted and the Director of Inspection and Standards reported that, apart from one comment by a prison guard which was overheard by one of his lawyers and said to be "detrimental in nature or toner, the investigations he had ordered revealed no evidence to justify Mr. Pinkney"s allegations.

27. Mr. Pinkney denies that he was ever interviewed personally about these complaints and objects that inquiries conducted by another department of the service complained against cannot be regarded as sufficiently independent. Mr. Pinkney has not, however, submitted to the Committee any contemporary written evidence of complaints of ill-treatment made by him and the Committee finds that it does not have before it any verifiable information to substantiate his allegations of violations of articles 10 (1) and 17 (1) of the Covenant in this respect. The Committee is not in a position to inquire further in this matter.

28. With regard to Mr. Pinkney's complaints that during his pre-trial detention he was not segregated from convicted prisoners and that his treatment as an unconvicted prisoner was worse than that given to convicted prisoners, the State party in its submission of 22 July 1981 has given the following explanations:

"A.7 Services to remand prisoners:

"In his 7 April 1978 letter to the Human Rights Committee, Mr. Pinkney alleges, without giving any specific example, that'he was treated, as a remand prisoner, in a less favourable manner than was enjoyed by prisoners under sentence. It is inevitable that the treatment extended to remand prisoners will be regarded by them unfavourably when compared with that of sentenced prisoners, since the recreational, occupational and educational programmes offered to sentenced prisoners are not available to remand prisoners in the light of the nature and anticipated duration of their incarceration.

"The fact that benefits identical to those available to convicted persons are not available to remand prisoners does not mean that they are not treated, as required under Article 10, paragraph 1, of the International Covenant on Civil and Political Rights, with humanity and with respect for the inherent dignity of the human person. Like all prisoners, they can benefit from the physical and intellectual amenities offered by the Correctional Services, e.g. exercise, medical treatment, library services, religious counselling. It is true that they cannot avail themselves of certain programmes mostly destined to facilitate the social reinsertion of convicted persons. However, this does not, in the view of the Government of Canada, imply inhuman treatment or an attack on the dignity of remand prisoners.. In fact, the contrary might be implied since these programmes aim to give effect to Canada's obligation to socially rehabilitate convicted individuals (Covenant, art. 10, para. 3).

"B. Contact with convicted prisoners:

"On page 3 of his letter of 7 April 1978 and on pages 2 and 3 of his letter of 10 December 1980 to the Committee, Mr. Pinkney alleges that he was incarcerated at the Lower Mainland Regional Correctional Centre in an area of that institution which held sentenced prisoners while he was on remand status. The practice at the L. M. R. C. C. is for some sentenced prisoners in protective custody to serve as food servers and cleaners in the remand area of the prison. This arrangement is designed to keep them away from other sentenced prisoners who might cause them harm. The sentenced prisoners in the remand unit are not allowed to mix with the prisoners on remand except to the extent it is inevitable from the nature of their duties. They are accommodated in separate tiers of cells from those occupied by remand prisoners.

"The Government of Canada is of the view that lodging convicted prisoners in the same building as remand prisoners does not contravene article 10, paragraph 2, of the International Covenant on Civil and Political Rights. This was recognized in the annotations on the text of the draft international covenant on human rights prepared by the Secretary-General of the United Nations. In paragraph 42 of the said annotations, it was indicated that:

'Segregation in the routine of prison life and work could be achieved though all prisoners might be detained in the same buildings. A proposal that accused persons should be placed ~in separate quarters' was considered to raise practical problems; if adopted, States parties might be obliged to construct new prisons.'

"Further, the Government of Canada does not consider that casual contact with convicted prisoners employed in the carrying out of menial duties in a correction centre results in a breach of the segregation provisions of the Covenant."

29. Mr. Pinkney claims that the contacts resulting from such employment of convicted prisoners were by no means 'casual' but were 'physical and regular' since they did in fact bring unconvicted and convicted prisoners together in physical proximity on a regular basis.

30. The Committee is of the opinion that the requirement of article 10 (2) (a) of the Covenant that 'accused persons shall, save in exceptional circumstances, be segregated from convicted persons' means that they shall be kept in separate quarters (but not necessarily in separate buildings). The Committee would not regard the arrangements described by the State party whereby convicted persons work as food servers and cleaners in the remand area of the prison as being incompatible with article 10 (2) (a), provided that contacts between the two classes of prisoners are kept strictly to a minimun necessary for the performance of those tasks.

31. Mr. Pinkney also complains that while detained at the Lower Mainland Regional Correction Centre he was prevented from communicating with outside officials and was thereby subjected to arbitrary or unlawful interference with his correspondence contrary to article 17 (1) of the Covenant. In its submission of 22 July 1981 the State party gives the following explanation of the practice with regard to the control of prisoners' correspondence at the Correction Centre:

""Mr. Pinkney, as a person awaiting trial, was entitled under section 1.21 (d) of the Gaol Rules and Regulations, 1961, British Columbia Regulations 73/61, in force at the time of his detention to the 'provision of writing material for communicating by letter with (his) friends or for conducting correspondence or preparing notes in connexion with (his) defence'. The Government of Canada does not deny that letters sent by Mr. Pinkney were subject to control and could even be censored. Section 2.40 (b) of the Gaol Rules and Regulations, 1961 is clear on that point: '2.40 (b) Every letter to or from a prisoner shall (except as hereinafter provided in these regulations in the case of certain communications to or from a legal. adviser) be read by the Warden or by a responsible officer deputed by him for the purpose, and it is within the discretion of the Warden to stop or censor any letter, or any part of a letter, on the ground that its contents'are objectionable or that the letter is of excessive length.'

"Section 42 of the Correctional Centre Rules and Regulations, British Columbia Regulation 284/78, which came into force on 6 July 1978 provides that:

'42 (1) A director or a person authorized by the director may examine all correspondence

other than privileged correspondence between an inmate and another person where he is of the opinion that the correspondence may threaten the management, operation, discipline or security of the correctional centre.

'(2) Where in the opinion of the director, or a person authorized by the director, correspondence contains matter that threatens the management, operation, discipline or security of the correctional centre, the director or person authorized by the director may censor that matter.

'(3) The director may withhold money, or drugs, weapons, or any other object which may threaten the management, operation, discipline, or security of a correctional centre, or an object in contravention of the rules established for the correctional centre by the director contained in correspondence, and where this is done the director shall

(a) Advise the inmate,

(b) In so far as the money or object is not held as evidence for the prosecution of an offonce against an enactment of the province or of Canada, place the money or object in safe-keeping and give it to the inmate on his release from the correctional centre, and

(c) Carry out his duties under this section in a manner that, in so far as is reasonable, respects the privacy of the inmate and person corresponding with the inmate.

'(4) An inmate may receive books or periodicals sent to him directly from the publisher.

'(5) Every inmate may send as many letters per week as he sees fit.'

32. Although these rules were only enacted subsequent to Mr. Pinkney's departure from the Lower Mainland Regional Correction Centre, in practice they were being applied when he was detained in that institution. This means that privileged correspondence, defined in section 1 of the 'regulations as meaning 'correspondence addressed by an inmate to a Member of Parliament, Members of the Legislative Assembly, barrister or solicitor, commissioner of corrections, regional director of corrections, chaplain, or the director of inspection and standards', were not examined or subject to any control or censorship. As for non-privileged correspondence, it was only subject to censorship if it contained matter that threatened the management, operation, discipline, or security of the correctional centre. At the time when Mr. Pinkney was detained therein, the procedure governing prisoners' correspondence did not allow for a general restriction on the right to communicate with government officials. Mr. Pinkney was not denied this right. To seek to restrict his communication with various government officials while at the same time allowing his access to his lawyers would seem a futile gesture since through his lawyers, he could put his case to the various government officials whom he was allegedly prevented from contacting."

33. In his letter of 27 August 1981 Mr. Pinkney comments as follows on these submissions of the State party:

"Further, on page 5 of the Government of Canada's submission, it is alleged by the Government that my mail was not tampered with at Oakalla, when in point of fact, not only was my mail interfered with by prison authorities in the normal sense of the requirements affecting all prisoners, but in point of fact, as the Government well knows, in some instances my mail to members of Government (whose mail should indeed have been privileged mail) never even got to these people, for it never even left the prison, once I mailed it. To imply, as does the Government, that such actions would be 'futile' for prison authorities to engage in, due to my having access to my lawyer at certain very definite times, is absolute nonsense."

34. No specific evidence has been submitted by Mr. Pinkney to establish that his correspondence was subjected to control or censorship which was not in accordance with the practice described by the State party. However, article 17 of the Covenant provides not only that "No one shall be subjected to arbitrary or unlawful interference with his correspondence" but also that "Everyone has the right to the protection of the law against such interference". At the time when Mr. Pinkney was detained at the Lower Mainland Regional Correction Centre the only law in force governing the control and censorship of prisoners' correspondence appears to have been section 2.40 (b) of the Gaol Rules and 'Regulations 1961. A legislative provision in the very general terms of this section did not, in the opinion of the Committee, in itself provide satisfactory legal safeguards against arbitrary application, though, as the Committee has already found, there is no evidence to establish that Mr. Pinkney was himself the victim of a violation of the Covenant as a result. The Committee also observes that section 42 of the Correctional Centre Rules and Regulations that came into force on 6 July 1978 has now made the relevant law considerably more specific in its terms.

35. 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 communication discloses a violation of article 14 (3) (c) and (5) of the Covenant because the delay in producing the transcripts of the trial for the purpose of the appeal was incompatible with the right to be tried with undue delay.