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Institution: Inter-American Commission on Human Rights
File Number(s): Application No. 9213
Session: Seventy-First Session (14 – 25 September 1987)
Title/Style of Cause: Disabled Peoples' International (D.P.I.) v. United States
Doc. Type: Decision
Dated: 22 September 1987
Citation: Disabled Peoples' International v. U.S., Inter-Am. C.H.R.,
OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987)

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THE FACTS:

I. The facts of the case as submitted by the parties may be summarized as follows:

On November 5, 1983 Disabled Peoples' International (D.P.I.) et al. filed a complaint with the Commission on behalf of the "unnamed, unnumbered residents, both living and dead, of the Richmond Hill Insane Asylum Grenada, West Indies" against the United States.

On Monday, October 24, 1983 the Richmond Hill Insane Asylum in Grenada was bombed by military aircraft of the United States of America.

The U.S. Government sought to have the petition declared inadmissible since the "unnamed, unnumbered residents" were not identified as required by the Commission's Regulations.

Representatives of D.P.I. et al. traveled to Grenada December 17-21, 1984 to correct the defects in the original petition. The D.P.I. et al. lawyers identified the following 16 persons who were killed as a result of the bombing of the asylum:

Jane Smith
Daphne Ventnor
Magdalene Crompton
Georgiana English
Reginald Julien
Wilson Williams
John Joseph
Sylvester Charles
Dudley Antoine
Desmond Williams
Charles Carter
Glen McSween
Allen Greenidge
George Gittens
Bernadette Brown
Cecil Baptiste

and the following six persons who were injured:

Joseph Ryan

George Bain
Rufus Charles
Garvis George
Kyron Callica
Dorothy Augustine

II. The applicants' complaint requests that:

Pursuant to Article 26 of the Commission's Regulations that the Commission investigate the current situation at Richmond Hill Insane Asylum in Grenada. Applicants invoke Article 26 based on the "possible irreparable damage" which may occur to persons who are still residents in the bombed-out facility.

Pursuant to Article 34(2)(c) of the Commission's Regulations that the requirement of exhaustion of domestic remedies be waived. Applicants allege that domestic U.S. remedies are not sufficient to protect the human rights of the victims.

U.S. defenses of military necessity or military error not be accepted to excuse or justify violations of the right to life, liberty and security of the person, and

1. that acts committed in violation of the OAS Charter are not subject to military necessity or military error defenses; and
2. that acts committed in violation of the Geneva Conventions of 1949 are not subject to military necessity or military error defenses.

In this connection applicants allege a violation of:

- Articles I and XI of the American Declaration of the Rights and Duties of Man ("American Declaration") given the current conditions at the mental institution;
- Article I of the American Declaration in so far as the aerial bombing resulted in deaths and injury;
- The Convention Relative to the Protection of Civilian Persons in Time of War (The Fourth Geneva Convention).

III. PROCEEDINGS BEFORE THE COMMISSION

The Commission forwarded the pertinent parts of the complaint to the U.S. Government on November 14, 1983, requesting information thereon within 90 days. The Commission's request for information was stated not to constitute a decision as to the admissibility of the communication.

By letter received May 7, 1984 the U.S. Government acknowledged receipt of the complaint and requested a short delay over the 90 day period for the submission of its response.

By note of September 21, 1984 the U.S. Government submitted its response to the complaint which it argued should be declared inadmissible.

IV. SUBMISSIONS OF THE PARTIES

A. The respondent Government's submissions (of September 21, 1984)

1. The legal instruments upon which petitioners rely are outside of the Commission's competence. The U.S. Government maintains that the petition asks the Commission to determine matters outside the

competence assigned to it by Article 112 of the OAS Charter and by the Commission's Statute and Regulations. The U.S. Government further maintains that the Commission is not an appropriate organ to apply the Fourth Geneva Convention to the United States because "the Geneva Conventions govern the relations between nations in times of armed conflict, a broad subject that extends beyond this Commission's mandate, i.e., examination of the enjoyment or deprivation of the 'rights set forth in the American Declaration of Rights and Duties of Man'."

The U.S. argues, in the alternative, that "putting aside the question of the Commission's competence, it is clear that the actions of the United States were entirely consistent with the Fourth Geneva Convention."

2. Petitioners' failure to exhaust domestic remedies renders the petition inadmissible.

The U.S. Government maintains that "only the Government of Grenada (...) can authorize reconstruction of the mental hospital or can determine where patients will be housed in the interim", and therefore the petitioners should seek redress from the Government of Grenada, and the exhaustion requirement should not be waived.

Further, the U.S. Government states that the victims had access to remedies against the United States. The U.S. Government established a procedure by which the U.S. made payments to persons and entities that incurred damage during October-November 1983. Any of the mental patients (or their survivors) were allegedly entitled to take advantage of this remedy.

3. The U.S. Government further maintained that the complaint should be declared inadmissible because the victims were not identified. As stated above, this defect was corrected by the Petitioners and need not be considered here.

B. The applicants' submissions (of February 8, 1985)

1. Petitioners claims are within the competence of the Commission.

Applicants maintain that since Article 112 of the OAS Charter provides that:

There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights... that this complaint is within the Commission's competence.

a) Alleged violations of Articles I and XI of the American Declaration

Applicants maintain that the deaths and physical injuries of helpless mental patients caused by purposeful armed attack on their hospital constitute violations of Articles I and XI of the American Declaration.

b) The Commission may be guided by general international law protections

Applicants state that their claim is based on Articles I and XI of the American Declaration but that these provisions be construed in conformity with other relevant international rules protecting the human person, such as the Geneva Conventions.

Applicants argue that to do so is consistent with both regional and international understanding of the competence of protection systems. Applicants cite as authority: Advisory Opinion "Other Treaties" subject to the Consultative Jurisdiction of the Court, Inter-American Court of Human Rights, Ad. Op. Bo. OC-1/82 (September 24, 1982), and 1981-82 Annual Report, Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.57 (1982) at 116 (application of Geneva Conventions to El Salvador).

c) The right to life is non-derogable.

Applicants maintain that the right to life is non-derogable and is a pre-emptory norm of international law (jus cogens) regardless of which treaties have been ratified by that state. Applicants note that all relevant international instruments protect civilians from derogation of this right even in states of emergency.

d) The U.S. Government may not invoke exceptions to the norm that the right to life is non-derogable.

Applicants maintain that the right to life is in fact derogated during wartime. Applicants argue that the Geneva Conventions, customary humanitarian law, general principles of civilized nations and The Hague Convention, must be consulted to ascertain whether the U.S. Government's defense states a permissible exception to the right to life.

e) Alleged continued violation of Article XI of the American Declaration.

Applicants maintain that the insane asylum was and still is in shambles and that the residents continue to suffer serious medical and health problems.

f) Article 26 of the Regulations

Applicants maintain that the petition is admissible under the emergency jurisdiction provided for by Article 26 of the Commission's Regulations.

2. Petitioners have satisfied all requirements for exhaustion of domestic remedies.

Applicants maintain that they have no domestic remedies to exhaust. They have not initiated judicial proceedings in U.S. courts because at the time the petition was filed, the dead and injured Grenadans were not members of DPI or IPI, the two organizations representing the victims. U.S. law requires that plaintiffs have actual injuries in order to have standing to sue. Applicants assert that U.S. law would not allow a domestic suit since petitioners allege death and injuries to foreigners incurred outside the territorial borders of the U.S., and in addition, the U.S. Foreign Claims Act and the Military Claims Act both preclude claims arising from military actions.

Applicants further assert that a suit in Grenadan courts was impossible at the time of filing due to the fact that the Grenadan judicial system was in complete disarray and that the Courts were not functioning.

Applicants also point out that the victims were unable to participate in the U.S. claims process. As mental patients they were not and are not now free to come and go. U.S. Government agents did not seek out the injured asylum victims to receive their claims and the victims could not go to the U.S. Government. Applicants allege that no agent of the U.S. assisted the victims in presenting claims despite the fact that the U.S. Government knew where they were.

3. Applicants maintain the admissibility of their complaint and request that the Commission find that the U.S. Government has violated Articles I and XI of the American Declaration and to make the appropriate recommendations. In the alternative, they request that the Commission facilitate a friendly settlement between the parties if such remedy is available to States that have not ratified the American Convention.

C. The respondent Government's second submissions (dated August 26, 1985)

The U.S. Government reiterated the positions expressed in its initial submission but included the following precisions.

1. The Petition is outside of the Commission's competence.

The U.S. Government states that "although petitioners refer "to Articles I and XI of the American Declaration, the gravamen of their petition is the contention that the United States violated the law of armed conflict, particularly the Fourth Geneva Convention, which pertains to the protection of civilians in time of war." The U.S. Government argues that "only if" the Commission concludes that the U.S. violated the law of armed conflict could the Commission find in petitioners' favor, and since the OAS member states did not consent to the Commission's jurisdiction over that subject, the petition is inadmissible. The U.S. maintains that it is a fundamental principle of international law that international tribunals do not have the competence to decide a particular dispute without the express consent of each State involved in that dispute. Repondent Government cites: Case of Monetary Gold Removed from Rome in 1943, 1954 I.C.J. Rpts., p. 32 as authority for this argument.

The U.S. Government states that the Commission has been empowered by the OAS member States with competence only over "the rights set forth in the American Declaration of the Rights and Duties of Man." The OAS member States did not grant to the Commission competence "to adjudicate matters arising under the complex and discrete body of international law that governs armed conflict," and "moreover, that body of law contains its own procedures for the resolution of alleged violations thereof, such as the enquiry procedure contained in Article 149 of the Fourth Geneva Convention."

Further, the U.S. Government dismisses the applicants' contention that the Commission has applied the law of armed conflict to El Salvador. The phrase in question cited from the 1982 Annual Report "cannot be construed as an application by the Commission of the law of armed conflict to a member State".

2. The Petition is inadmissible because petitioners did not exhaust domestic remedies. The U.S. Government reiterated its position that it had established a procedure whereby Grenadan individuals and entities could present claims for compensation, and that "it appears that the Richmond Hill mental patients, or their survivors, could have presented precisely the sort of claim that has repeatedly been compensated under this program." According to Respondent Government, the petitioners fail to demonstrate that "they or the individuals they purport to represent should not be required to exhaust domestic remedies against the United States," and that petitioners "should not be excused from the exhaustion requirement where none of the exceptions in Article 34.2 apply."

3. The Organizational Petitioners have not Demonstrated that they Represent the Mental Patient. The U.S. Government challenges D.P.I. and I.D.I.'s claims to represent the cause of the dead and injured mental patients, in part, because they did not assist them or their survivors in the filing of claims against the U.S. Government. The U.S. recognizes that the Commission does not require the consent of the victim in order to admit the petition. The petition, the U.S. states, complains about the bombing of the hospital and about conditions after the bombing. The U.S. responds that "to the extent that patients, their guardians, or their survivors desired compensation for injury or death resulting from the bombing, a well-publicized procedure was available (...) to the extent that they seek relief from present conditions it is futile to address such a grievance to the United States."

4. Friendly Settlement is Not Appropriate in this Case. The U.S. Government rejects applicants proposal of a friendly settlement procedure for two reasons: 1) the American Convention does not apply to the United States, and 2) a friendly settlement procedure would require the Commission to apply the law of armed conflict to the United States, "and would therefore exceed the Commission's competence."

D. The applicants response of February 4, 1986

1. The issue of the Commission's competence
Applicants reiterate that they bring this case under Articles I and XI of the American Declaration. Applicants maintain that the "Commission could find a violation of the right to life and security of the person and a right to the preservation of health with no mention of aggravated violations due to the occurrence of the violations in the course of armed conflict. Both human rights and humanitarian law prohibit the acts admitted to. Petitioners raise humanitarian law both to answer possible defenses of Respondent and because Petitioners maintain that humanitarian law as a whole is subject to interpretation of the Commission where the right to life and other rights are violated by a party to armed conflict."

2. Express consent for a particular action is not required.

Applicants reiterate their position that the Commission has competence to apply international humanitarian law rules to OAS member States.

3. Petitioners exhausted domestic remedies
Applicants reiterate that at the time the U.S. claims procedure was instituted in Grenada the victims were committed mental patients at the Richmond Hill Facility "unable to leave or exercise their right to submit claims to Respondent." Applicants argue that respondent did not send a representative to visit the asylum to assist the victims in filing claims. Applicants point out that respondent knew of the status of the patients since the petition had already been filed and the respondent had been notified by the Commission. Applicants further state that they seek relief from the conditions of the facility caused by the U.S. Government's armed attack on it.

4. Petitioners request determination on the merits
Applicants urge the Commission to decide the merits of the case given that the U.S. Government is not amenable to a friendly settlement procedure.

THE LAW:

Two issues are raised by the applicants and the respondent Government:

1. Do the alleged facts constitute a prima facie violation of a human right recognized in the American Declaration by a member State of the OAS?
2. Have domestic remedies been exhausted or do any of the exceptions set forth in Article 37 of the Regulations excuse the applicants from exhausting domestic remedies?

The Inter-American Commission on Human Rights sitting in private on April 17, 1986, the following members being present:

Mr. Siles, Chairman
Mrs. Russomano
Mrs. Kelly
Mr. Jackman
Mr. Bruni Celli

DECLARED THE APPLICATION ADMISSIBLE.

Having found that:

1. Domestic remedies were not provided by the legislation of Grenada or the United States; given the ad hoc nature of the U.S. compensation program, the evident failure of the U.S. Government to contact these incapacitated victims, and the unwillingness of the U.S. Government to compensate these victims subsequent to the expiration of the ad hoc compensation program, lead the Commission to conclude that the domestic remedies could not be invoked and exhausted so as to render the provision of Article 37 (2) (a) applicable.

* Mr. Bruce McColm, an American national, pursuant to Article 19 of the Regulations, did not participate in the consideration of this matter. Mr. Monroy Cabra was absent.