

REPORT N° 19/92
DECISION OF THE COMMISSION AS TO THE ADMISSIBILITY OF CASE
10.865
UNITED STATES
October 1, 1992

I. BACKGROUND INFORMATION:

1. On April 15th, 1991, a complaint was received by the Inter-American Commission on Human Rights.

2. The complaint alleged that between 1970 and 1978 bogus criminal warrants were issued by Judge Fred G. DiBona, against members of the Move Organization. (It is alleged that "Move" is a revolutionary organization, motivated by the teachings of founder, John Africa, whose purpose is to confront and expose injustice wherever it exists.) This resulted in the commission of several acts of brutality by the police, and the government on various members of the Move Organization, including women, pregnant women, and children in order to eliminate them. These brutal acts have culminated in the death of a number of Move babies.

II. ALLEGED FACTS:

1. Prior to May 13th, 1985, the Mayor of Philadelphia stated on public radio that he wanted a "permanent end" to "Move." After months of planning by the public officials of Philadelphia, the State of Pennsylvania, the United States Justice Department, FBI agents, ATF agents, the United States Attorney for the Eastern District, and members of the police department, warrants were issued on May 11th, 1985 against several members of the Move Organization, for non confrontational incidents which occurred on April 29th, 1985.

2. On May 12th, 1985, members of the police force began evacuating the entire 6200 block of Osage Avenue, home and headquarters of the Move Organization, on the pretext of serving four of these warrants, and in the early hours of May 13th, 1985, over a hundred policemen surrounded the residence of the Move members. Thirteen Move members, including six children were at home. In the first ninety minutes, the police started attacking their home with tear gas, deluge hoses, stun grenades, ten thousand rounds of bullets, and explosives. Police then dropped a C-4 bomb, which was supplied by the Federal Government on the roof of their home. The Bomb ignited a fire, however the police and fire officials made a conscious decision not to put the fire out.

3. The Move Members repeatedly "hollered" that they were bringing the children out, and Ms. Africa attempted to bring some children out of their home, but they were met with a barrage of police gunfire and driven back into the fire. Finally, Ms. Africa and Birdie Africa made it through the fire and police gunfire. Ms. Africa was immediately arrested by the police, and Birdie Africa was also taken into custody. They were severely burned, and were hospitalized. Ms. Africa later learned that six adults, five children, their dogs, and cats were dead.

4. Ms. Africa was charged and convicted of conspiracy to riot, and riot, and was sentenced to sixteen months to seven years in prison. However, none of the public officials were prosecuted or held accountable for the death of the Move members. Two grand juries, both state and federal failed to indict them, and the District of Philadelphia and United States Attorney failed to prosecute them.

III. THE APPLICANT'S COMPLAINT REQUESTS THAT:

1. The public officials be held accountable for the conspiratorial murder of the eleven Move members, including five children who were deliberately murdered on May 13th, 1985, and that the Commission do what is just, and right. The public officials that the complaint alleges committed the violations are Wilson Goode, Mayor of Philadelphia, Gregore Sambor, Police Commissioner, Wm. Richmond, Fire Commissioner, former Managing Director, Gen. Leo Brooks, Lt. Frank Powell of the Philadelphia Police Department, Harvey Clark, Maida Odom, and Bill Steinmetz.

IV. IN THIS CONNECTION THE APPLICANT ALLEGES VIOLATIONS OF:

1. Articles I-V, VII, VIII, IX, XVII, XVIII, XXI, XXII, XXV, XXVI of the American Declaration of the Rights and Duties of Man.
2. Articles 4, 7, 8, 12, 13, 16, 19, 24 of the American Convention of Human Rights.

V. PROCEEDINGS BEFORE THE COMMISSION

1. Upon receipt of the complaint on April 15th, 1991, and up to August 4th, 1992, the Commission acting through its Secretariat complied with all the procedural requirements of Articles 30 to 35 of its Regulations. In this regard the Commission communicated with the petitioner and the United States Government, studied, considered and examined all information submitted by the parties.

2. The Commission transmitted seven notes to, and received five notes from the United States Government. Two of the Government's notes addressed the issues presented in the Complaint. They contained arguments stating that the petition is inadmissible, because the petitioner had failed to allege invocation and exhaustion of domestic remedies, and that domestic remedies had not been exhausted.

3. The Commission transmitted five notes to, and received five notes from the petitioner, and several enclosures addressing the issues raised in the complaint. In one of the notes the petitioner amended the petition to allege that all criminal domestic remedies were invoked and were now exhausted.

VI. SUBMISSIONS OF THE PARTIES

A. The Respondent Government's First Submission (contained in note received December 3rd, 1991) stated that:

The United States maintains that the complaint should be found inadmissible by

the Commission for the following reasons:

The Petition Is Inadmissible Because Petitioner Has Failed To Invoke Exhaustion Of Domestic Remedies

1. The petitioner has failed to invoke exhaustion of domestic remedies, and has failed to supply information in her petition concerning whether remedies under domestic law have been exhausted. Thus the petition is inadmissible in accordance with Articles 32 and 37 of the Commission's Regulations.

The Petition Is Inadmissible Because Petitioner Has Failed To Exhaust Domestic Legal Remedies Available To Her

2. The petitioner has not in fact exhausted domestic legal remedies. Petitioner is now (and was at the time she submitted her communication to the Commission) engaged in civil litigation, Civil Action N^o 87-2768, brought in 1987, in the United States District Court for the Eastern District of Pennsylvania.

3. This litigation has been brought against the City of Philadelphia, and the following present and former city officials and employees: W. Wilson Goode, Mayor; Leo Brooks, former Managing Director; Gregore Sambor, former Police Commissioner; Williams Richmond, former Fire Commissioner; Edward Powell, Philadelphia Police Department; and Albert Revel, Michael Tursi, William Klein, and Deputy City Solicitor, City of Philadelphia. All of these individuals are listed in the petition as having committed the alleged violations.

4. The allegations of the complaint arose out of the same matter, the confrontation between the Move organization and the City of Philadelphia on May 13th, 1985, and form the substance of the complaint brought before the Commission. The causes of action raised in the complaint are violations of the Civil Rights Act of 1964, 42 U.S.C. SS 1983 and 1985, as well as various pending state claims such as negligence, against individuals she identifies in her communication.

5. Petitioner cannot claim she has been or is being denied due process of law or access to domestic remedies in order to invoke the jurisdiction of the Commission. (Article 37(2)(a)(b) of the Commission's Regulations. The discovery phase of the litigation is still proceeding, although the deadline for new discovery requests has expired.

6. In addition, this action is proceeding through United States courts without unwarranted delay. The Court has set a pre-trial briefing schedule which requires defendants to file all summary judgment motions no later than December 31, 1992, and plaintiff to respond no later than January 1992.

7. The requirement for exhaustion is recognized and well established in the Commission's practice. (See, e.g., Wilfong v. United States (Case 7967) (June 30, 1983); Soto v. United States (Case 1773) (October, 1974).) Thus, the petition is inadmissible under the requirements of Article 37 of the Commission's regulations, and under the provisions of Article 20 of the Statute of the Commission.

8. The petition is incomplete, and therefore inadmissible, because the petitioner has failed to supply information concerning whether she has exhausted domestic remedies. Article 32(d) of the Commission's Regulations requires that petitions include "information on whether the remedies under domestic law have been exhausted or whether it has been impossible to do so".

9. Pursuant to Article 41(a) of the Commission's Regulations, the Commission must declare a petition inadmissible when "any of the requirements set forth in Article 32 of these Regulations has not been met" [emphasis added]. Since petitioner has failed to exhaust fully judicial remedies available in the United States, the petition clearly fails to satisfy the exhaustion requirement, and this communication does not address in detail the interpretations of law and factual assertions presented in the petition.

B. The Petitioner's First Submission (received February 10th, 1992) stated that:

The Petitioner Should Be Allowed To Amend Her Complaint To Allege Exhaustion Issues.

1. Petitioner maintains that she filed the instant suit pro se, and retained counsel several months after filing the instant suit. Domestic law clearly holds that pro se pleading are to be judged by a less stringent standard than those prepared by attorneys. Haines v. Kerner, 404 U.S. 519. The policy and practice of the Commission has also been to allow some leniency in this regard to pro se petitioners.

2. Furthermore, she has not had any formal legal training, particularly in the highly specialized area of international human rights law. She also lacked ready access to international legal materials, due to her incarceration, which would have given her additional guidance on the specific requirements in drafting the complaint. Thus, she should not be held to the same high standard of pleading that the government asserts she should be held to.

3. Finally, respondent will not be prejudiced by petitioner's inclusion of exhaustion allegations at this stage. In fact, respondents have already anticipated petitioner's arguments and have provided their response to them. Petitioner should be allowed to now allege and argue the issue of exhaustion of domestic remedies.

Petitioner Has Exhausted All Her Criminal Remedies

1. It is uncontested by the respondent that petitioner was found guilty of riot and conspiracy on February 9, 1986. It is also uncontested that on February 18th, 1986 the petitioner filed post verdict motions which were denied on April 14, 1986. The parties are also in agreement on the following:

2. Petitioner motioned the court on April 22, 1986 for reconsideration of her sentence. This was denied. Petitioner appealed her conviction to the Court of Appeals on April 25, 1986. The appellate court denied petitioner's appeal on May 11, 1987. Petitioner then filed her petition for Allowance Of Appeal to the Supreme Court

on October 9, 1987. This too was denied on February 19, 1988.

3. Thus, petitioner has exhausted all her domestic criminal remedies. Domestic law provides that it is only through the above steps that a person convicted of a crime in the United States of America can obtain relief from their conviction and thus obtain release from prison.

4. Petitioner requests, that she and the other Move members who are currently unjustly incarcerated be released. (Petitioner was released from prison on May 13, 1992, argument as to herself moot. Petitioner also argued that other Move members who were incarcerated have also exhausted their domestic remedies, and cited their names, which are omitted because they all have arrest dates prior to May 13th, 1985.)

Petitioner Has Exhausted All Avenues of Remedy Which Would Allow For Criminal Prosecution Of The Respondents

1. Petitioner has exhausted all avenues that would allow for criminal prosecution of the respondents, and that as part of her prayer for relief, she is requesting that the respondents be held criminally liable for their actions. With regard to the May 13, 1985 events, the county investigating grand jury and the federal grand jury failed to institute any criminal charges against any of the respondents.

2. The Civil Rights Division of the Department of Justice and the Federal Bureau of Investigation also erroneously concluded that criminal charges were not warranted against the respondents. Furthermore, the Philadelphia Special Investigating Commission was without authority to institute charges against anyone.

3. With regard to the repeated incidents of police brutality against pregnant Move women, no charges were ever even considered against the police. Nor were charges brought for the killing of baby Life Africa.

Petitioner's Civil Remedies Are Inadequate To Provide Relief

1. The cited Civil Action N° 87-2678 relates only to the violations of the petitioners' domestically protected civil rights perpetrated by the named defendants in relation to the events surrounding the May 13, 1985 attack on the Move house.

2. It does not relate to other events alleged as violations of international human rights standards which are cited in petitioner's complaint before the Commission. Nor does her civil complaint relate to the violations of other Move members' civil rights. Thus, other Move members and the petitioner are outside their statutory timeframe to bring civil rights actions on their own behalf.

3. Furthermore, if she prevails in her civil action, her only form of relief is monetary compensation for the injury done to her. No criminal penalties will be imposed on the named defendants in that action for their violation of the law.

Petitioner Cannot Obtain Adequate Due Process
In Any Domestic Action

1. The Commission has held in the past that where high level authorities in the government have made statements exonerating those involved, there is a strong indication that a negative attitude exists as regards inflicting the punishment that those responsible for an offense deserve. Such a negative attitude is strong indicia that the victim has been denied due process as it relates to exhaustion of his or her domestic remedies. Art. 37 (2)(b) and Resolution N° O1a/88, Case 9755, Chile, September 12, 1988.

2. Such indicia exist in the case at bar. Judges, district attorneys, the Mayor and the Governor have all shown through their actions and their statements that they could not render unbiased decisions when it came to Move. Furthermore, those responsible and potentially liable are high ranking government officials who ultimately controlled the investigating bodies and had authority to institute criminal charges.

C. The Respondent Government's Second Submission (received July 30th, 1992) stated that:

The Petitioner Has Failed To Exhaust Domestic Remedies
As Required by Article 37

1. The respondent government reiterated its first response, and maintained that petitioner's complaint should be dismissed under Article 37 of the Commission's Regulations because she has not exhausted available remedies under domestic law. The incidents which form the basis of petitioner's complaint are the subject of ongoing litigation, Civil Action N° 87-2678 in the domestic courts of the United States.

2. Petitioner is seeking monetary damages for, *inter alia*, alleged violations of her civil rights under the Civil Rights Act of 1964, 42 U.S.C. SS 1983 and 1985, in the federal courts, and negligence on the part of the City of Philadelphia, and several present, and former city officials.

3. Several procedural motions are presently pending before the presiding federal magistrate, who is expected to set a trial date in mid-September of this year. At the conclusion of the current litigation, petitioner may still have further remedies available to her under domestic law, as she may be able to appeal an unfavorable district court decision to the United States Court of Appeals for the Third Circuit.

4. Article 37 of the Commission's Regulations does not distinguish in any way between remedies afforded under the criminal and civil laws of a nation. The regulation plainly requires the exhaustion of all domestic remedies, not merely those selected remedies which petitioner claims she would prefer, and which she has

unilaterally deemed "adequate."

5. The United States notes that none of the legal instruments upon which petitioner relies--neither the American Convention on Human Rights, nor the American Declaration of the Rights and Duties of Man, nor the United States Constitution--confer upon petitioner a "right" to have the Government of the United States file criminal charges against those persons whom she has accused. The fact that petitioner evidently favors this particular "remedy" is not relevant to the exhaustion requirement.

6. The United States vigorously rejects the contention that the various civil remedies which petitioner is entitled to pursue under United States law are inadequate to provide relief for any of her claims which are ultimately proven to be meritorious.

The Exceptions To The Exhaustion Requirement Contained In
Article 37(2) Are Inapplicable to Petitioner's Claim

1. Article 37(2)(a) provides that the exhaustion requirement will not apply when "domestic legislation of the state concerned does not afford due process of law for protection of the right or rights allegedly violated." (Government's argument omitted, because it is undisputed by both sides that investigations have been conducted by the United States Civil Rights Division of the Department of Justice, the Federal Bureau of Investigation, the county grand jury, and the federal grand jury and no indictments were returned against any of the public officials involved.)

2. Because petitioner disagrees with the results of all four of these investigations does not indicate that domestic legislation is inadequate to afford her due process of law for protection of a "right" which does not exist.

3. The exhaustion requirement is clearly applicable because no unwarranted delay has elapsed in the rendering of the final judgment in the petitioner's pending civil action against the City of Philadelphia.

4. The provisions of Article 37(2)(c) are thus inapplicable, and this communication does not address in detail the interpretations of law and factual assertions presented in the petition.

THE LAW:

Three threshold issues are raised by the petitioner and the respondent Government:

1. (a) Should the provision of Article 37(1) of the Commission's Regulations which provide that, "the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law," be given a literal interpretation to include both criminal and civil remedies?

(b) Or should it be construed to imply, that in this case, the requirement of

"exhaustion of remedies under domestic jurisdiction" only requires the exhaustion of criminal remedies under domestic jurisdiction?

(c) Have domestic remedies been exhausted in this case, or do any of the exceptions set forth in Article 37 of the Regulations excuse the applicants from exhausting domestic remedies?

2. Whether the alleged facts as presented by the parties constitute prima facie violations of human rights as recognized in the American Declaration by a Member State of the OAS?

3. If so, can the Commission:

(a) Intra vires hold the respondent Government and other respondents criminally liable for the alleged violations? or

(b) Is it ultra vires the powers of the Commission?

ANALYSIS:

(a) ARTICLE 37(1) OF THE COMMISSION'S REGULATIONS SHOULD BE GIVEN A LITERAL INTERPRETATION TO INCLUDE BOTH CIVIL AND CRIMINAL REMEDIES

1. The petitioner has submitted arguments contending that all her domestic remedies under criminal law have been exhausted. The Respondent United States Government submitted two submissions which contained arguments that the petitioner's complaint should be dismissed because all the petitioner's domestic remedies have not been exhausted.

2. The Government argued that the petitioner was and is currently involved in ongoing litigation which is the subject matter of issues raised in the complaint before the Commission. In that litigation the petitioner filed civil rights and negligence actions against the various officials, and persons she has named in the complaint as the alleged violators of her human rights.

3. Article 37(1) of the Commission's Regulations provide "For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law."

4. Upon reading Article 37(1) of the Commission's Regulations it appears that the intent of the framers of the article meant it to be read literally to mean that "remedies" available under domestic jurisdiction should have been invoked and exhausted.

5. So that if the domestic jurisdiction in a state provided only criminal remedies, then criminal remedies should be invoked and exhausted. If however, a state provided only civil remedies then the civil remedies in that state should be invoked and exhausted. But a state providing both civil and criminal remedies, for the same alleged

violation, then the petitioner would be required to invoke and exhaust both type of remedies.

6. The framers made no distinction when drafting the section between civil and criminal remedies, because if they had decided that the section was intended to refer to only "criminal" and not civil or other remedies they would have delineated the same.

7. Some assistance is found in an Advisory Opinion OC-11/90 of August 10, 1990, of the Inter-American Court Of Human Rights as to the meaning of how the term "remedies" should be interpreted under Article 46(1)(2) of the American Convention on Human Rights. Article 46(1)(a) and 46(2)(a)(b)(c) recite the same matters contained in Article 37(1)(2) of the Commission's Regulations, as to the exhaustion of domestic remedies.

8. Although the opinion did not specifically deal with the meaning of what type of remedies Section 37(1) of the Commission's Regulations refer to, the Court however, examined the issue of exhaustion of remedies, with regard to " a person's indigency, or an inability to obtain legal representation because of a generalized fear among the legal community to take such cases."

9. The Court in addressing those issues considered Article 1, obligation to respect rights, Article 24, right to equal protection, Article 8, right to a fair trial, of the American Convention on Human Rights. The Court construed remedies as rights of persons guaranteed by the Convention, whether of a criminal, civil, labor, fiscal, or any other nature.

10. The Court stated on page 9, paragraph 27, that, "in cases which the accused is forced to defend himself because he cannot afford legal counsel, "a violation of Article 8 of the Convention could be said to exist if it can be proved that the lack of legal counsel affected the right to a fair hearing which he is entitled under that article."

11. In paragraph 28, the Court stated, "that for cases which concern the determination of a person's "rights and obligations of a civil, labor, fiscal, or any other nature," Article 8 does not specify any, " minimum guarantees" similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for "due guarantees," consequently, the individual here also has the right to the fair hearing provided for in criminal cases."

12. Thus, since the petitioner has acquired "rights" (as per alleged facts contained in petition) because of the alleged violations of her human rights under the American Declaration of the Rights and Duties of Man, then she has also acquired "remedies," whether they be of a civil or criminal nature, or both. Having acquired these remedies she must invoke and exhaust them, which she has done by appealing her criminal conviction to the highest appellate court, and commencing civil proceedings in federal court, where she is currently pursuing damages for violations of her civil rights, negligence, and other claims.

(b) DOMESTIC REMEDIES HAVE BEEN INVOKED BUT HAVE NOT BEEN EXHAUSTED BY THE PETITIONER THEREFORE ARTICLE 37

PARAGRAPHS (2) & (3) ARE INAPPLICABLE

1. Notwithstanding that this petition is to be construed under the American Declaration of the Rights and Duties of Man, because the petition is brought against the United States, who has signed the American Convention on Human Rights but has not ratified the same, the Court's assistance and guidance in the above advisory opinion could be utilized in interpreting Article 37(1) of the Commission's Regulations, with regard to the meaning of "domestic remedies" found in the section.

2. Therefore, as discussed above the remedies acquired, whether they be of a criminal, civil, labor, fiscal, or other nature, as per the Court's advisory opinion, must have been invoked and exhausted as provided by Article 37(1) of the Commission's Regulations. However, because the petitioner has invoked and is currently pursuing those remedies in the courts, her remedies under domestic jurisdiction have not been exhausted, therefore paragraphs 2, and 3, of Article 37 are inapplicable.

3. Furthermore, the petitioner is seeking to rely on the exhaustion of her criminal remedies, which were finalized on February 18th, 1988, by the denial of her appeal by the appellate court. The Commission received her petition on April 15th, 1991. Thus if the Commission were to consider the exhaustion of her criminal remedies in a vacuum, her petition to the Commission was untimely filed as per Article 38(1)(2), and inadmissible.

4. Article 38(1) provides that the Commission, "shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted."

5. Article 38(2) provides an exception, but states that "the deadline for the presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case."

6. Thus having concluded that Article 37(1) requires both criminal and civil remedies must have been invoked and exhausted under the domestic jurisdiction, the petition was timely filed.

7. However, having found above that the petition is inadmissible at this time, because domestic remedies have been invoked but not exhausted, the Commission need not reach the two other issues raised with regard to the merits of the case.

THEREFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. That the petition is inadmissible because the petitioner has not exhausted domestic remedies.