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CASE 10.951

UNITED STATES

Approved by the Commission at its 1219 session
held February 7, 1994

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REPORT NOP 194
CASE 10.951
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BACKGROUND

1. This case concerns events associated with the October 1983 overthrow of the Bishop Government in Grenada, and the subsequent United States intervention that ended the coup. On October 13, 1983, Prime Minister Maurice Bishop was placed under house arrest during a power-sharing dispute between two factions of the ruling New Jewel Movement. On October 19, Bishop supporters demonstrating on his behalf freed him from house arrest, and proceeded with him to Fort Rupert. Within several hours after the group arrived at the Fort, Maurice Bishop and ten other persons were executed. Bishop's administration was overthrown, and a Revolutionary Military Council (RMC) seized power. On October 25, 1983, United States and Caribbean armed forces landed on Grenada, established control over the island, and ended the coup.

The Complaint

2. This case was opened pursuant to the filing of a complaint dated July 24, 1991, by seventeen petitioners who were arrested, charged, and convicted of bearing responsibility for the October 19 killings. Fourteen of the petitioners were sentenced to death on December 4, 1986:

Callistus Bernard	Lester Redhead
Christopher Stroude	Hudson Austin
Bernard Coard	Liam James
Leon Cornwall	John Anthony Ventour
Dave Bartholomew	Ewart Layne
Colville McBarnette	Selwyn Strachan
Phyllis Coard	Cecil Prime

and three petitioners were sentenced to long prison terms on that date: Vincent Joseph - 45 years; Cosmos Richardson - 45 years; and Andy Mitchell - 30 years. The sentences of all seventeen petitioners were affirmed on appeal on July 12, 1991.

3. The petitioners are citizens of Grenada; at the time of the 1983 intervention the petitioners were government officials, or members of the Grenadian military. All of the petitioners are held in the Richmond Hill Penitentiary, St. Georges, Grenada.

4. The complaint sets forth that armed forces of the U.S. invaded Grenada on October 25, 1983, seized control of the island, removed the government, and

arrested thousands of people. As a consequence, a number of Grenadians were wounded or killed.

5. Petitioners assert that this military action violated the United Nations Charter, Articles 2(4) and 33, the inter-American Treaty of Reciprocal Assistance (the Rio Treaty), Article 1, and the Charter of the OAS, Articles 18, 20 and 21, as well as other international laws regulating the use of force by states. Petitioners note that the UN Security Council voted 11 to 1, the U.S. having exercised its veto, that the invasion was in "flagrant violation of international law and of the independence, sovereignty and territorial integrity" of Grenada, and that the UN General Assembly found the intervention deplorable by a resolution vote of 108 to 9.

6. Petitioners claim that U.S. forces arrested the petitioners during the period in which the U.S. consolidated its control of Grenada. The petitioners were held incommunicado for many days; it was months before they were taken before a magistrate, or allowed to consult with counsel. "During this period petitioners were threatened, interrogated, beaten, deprived of sleep and food and constantly harassed." Petitioners report that, more than a week after the invasion, the commanding officer for the U.S. armed forces in Grenada, Admiral Joseph Metcalf, III, publicly denied knowing the whereabouts of petitioners Austin and Coard when in fact they were confined aboard a ship under his command.

7. Petitioners further state that U.S. forces seized government documents, and public and private documents of former officials including petitioners. U.S. personnel investigated the deaths of Maurice Bishop and the others killed on October 19, 1983, and detained and interrogated hundreds of Grenadians. Reports, witnesses, evidence, documents, and the petitioners were turned over by the U.S. to a government "created, selected *and financed by the United States.*" Documents necessary for the petitioners' defense were withheld from them by the U.S.

8. According to the complainants, prosecution staff, the temporary judges appointed to preside over the trial and appeal, and support staff including security, were approved and paid for by the U.S. The U.S. made other payments to personnel of the office of the Attorney General of Grenada for services provided in conflict with their official duties. On February 20, 1986, while visiting Grenada, President Reagan announced a U.S. grant of five and a half million dollars to "fund the confinement, prosecution, [and] fees for lawyers appointed to act as judges and proceedings." He also publicly urged that the trial begin without delay. Although critical pre-trial motions were pending, proceedings began in March of 1986, and jury selection and the trial began in April. The U.S. also influenced the selection of the non-Grenadian prosecutors, and the non-Grenadian lawyers who served as judges.

9. Negotiations over payment for the services of the temporary judges presiding over the appeal continued throughout the trial, until the final day of their

decision, July 12, 1991. According to the complainants, the excessive fees paid to the temporary judges in the appeal of the case influenced the judges' decision to the detriment of the petitioners' rights. Petitioners also report that U.S. personnel monitored the trial.

10. Finally, the petitioners allege that the actions of the United States specifically violated:

(a) the sovereignty of Grenada, corrupted its system of justice and deprived petitioners of their fundamental human rights to judgments rendered by competent courts, in accordance with laws enacted prior to the alleged acts for which they were charged as guaranteed by Articles XVIII, XXV and XXVI of the American Declaration; see also Articles 4, 7, 8, 9, 24 and 25 of the American Convention on Human Rights;

(b) petitioners' human rights to a hearing by a competent, independent and impartial tribunal previously established by law guaranteed by Articles XVII, XXV and XXVI of the American Declaration, see also Article 8, Section 1 of the American Convention on Human Rights;

(c) petitioners' human rights to liberty, freedom from arbitrary arrest, notification of charges, physical and mental integrity, freedom from cruel, inhumane and degrading punishment and punishment only after conviction in violation of Articles I, 11, XVI, XVIII, XXV and XXVI of the American Declaration, see also Articles 5 and 7 of the American Convention on Human Rights.

PROCEEDINGS BEFORE THE COMMISSION

11. Petitioners had filed a complaint against the Government of Grenada in 1984, case number 9239, in connection with their detention. Acting with regard to that case, on July 19 and July 29, 1991, the Commission telexed the Prime Minister of Grenada requesting that execution of the petitioners sentenced to death be stayed for humanitarian reasons, and in order that the Commission might review the petitioners' claims.

12. On August 14, 1991, the Government of Grenada commuted the death sentences imposed on fourteen of the petitioners to sentences of life imprisonment.

13. The petitioners' representative addressed the Commission in a hearing held on September 19, 1991, in which he set forth the importance of the case, and requested action on the case by the Commission.

Additional Information Submitted by Petitioners

14. Further information, dated August 4, 1991, was submitted by the petitioners alleging human rights violations that prevented them from presenting their case and proving their innocence. Petitioners allege that they were denied the requirements of a fair trial: petitioners' counsel were threatened with being found in contempt of court, and were forced from the trial; petitioners themselves were held in contempt and excluded from the courtroom throughout the jury selection process; the jury was chosen from a list prepared by a former member of the prosecution; the list included many known to be prejudiced against petitioners; jurors were not screened for prejudice; petitioners were consistently excluded from the remainder of the proceedings.

15. Prior to and throughout the trial, petitioners demanded the production of, or return of documents, diaries, briefcases, tape recordings, and other evidence necessary to present their defense. Petitioners likewise demanded the return of communications from counsel, trial preparation notes, other documents, and writing materials that had been confiscated by prison authorities.

16. Petitioners noted evidence on the record that the United States had custody of items that petitioners had requested and had not received. Jamaican Defense Force Officer Earl Brown testified at trial that he had accompanied Captain Fore of the 82nd Airborne Corps of the United States to the site of a common grave, and that the Captain "took possession" of evidence found there.

17. Petitioner Hudson Austin stated at trial that he needed certain documents to present his case, including meeting minutes, his military and personal diaries, and his passport. He proffered that information noted on his passport would constitute clear and convincing evidence with which to impeach the testimony of a witness against him. He testified that on November 8, 1983, he was interrogated by Mr. Gillespie of the U.S. State Department, and Captain Donayhera and Colonel Stewart of the U.S. Armed Forces, and that they had with them his briefcases, records and diaries he had requested the return of. Petitioners' requests for the return of documents and other materials were unheeded.

18. The trial court ruled on July 4, 1986:

The position of the court is that it has no jurisdiction to compel a foreign Government to attend or produce documents before court. It is a matter of the court's record that a subpoena duces tecum was issued and served on the U.S. Ambassador at the U.S. Embassy in St. George's, Grenada. It was returned with a diplomatic note invoking immunity and alleging that the Embassy does not have possession of the various documents referred to in the summons.

"The U.S. State Department officially informed U.S. Congressional inquiries that the United States had turned over all records to the Government of Grenada. Petitioners have never received documents, tape recordings and other evidence that would prove their innocence."

19. Fabian Gabriel, a witness at trial, had initially been charged along with the petitioners with complicity in the October 19 killings. He was held with the petitioners until April 22, 1986, when he was given a pardon on the condition that he give evidence at trial. Petitioner Cornwall, excluded from the courtroom during Gabriel's testimony against him, was asked afterward if he wished to cross examine Gabriel. Trial court notes set forth petitioner Cornwall's response:

... it is very interesting to note that on 4th November 1983 while I was held captive by US invading forces on [the USS] Saipan two Yankee officials came to me and said Cornwall we want you to tell us about Coard and we want you to be key witness. They tried sweet talk and threats that they would hand me over to Caribbean people....On 6th March 1984 they put me in hand of Caribbean people one Isaac and three Barbadian. They had me softened. Beating me in private part....

Petitioners assert that Gabriel's testimony was tainted, that it was not credible, and that Gabriel lacked personal knowledge from which to allege petitioners' participation in the events at Fort Rupert, the site of the October 19 killings. Petitioners assert that other testimony against them was likewise tainted, not credible, and fraught with factual and substantive conflicts.

The Government's Response

20. The Commission received what was characterized as an "interim response" from the U.S. Government, dated October 22, 1991, which stated in pertinent part:

Without prejudice to our position with respect to whether the U.S. is an appropriate respondent to the petition ... the Grenadian Government's August 14, 1991 announcement of a grant of clemency to those petitioners who were under sentence of death renders moot related issues set out in the referenced petition. Therefore, the U.S. government will not address this aspect of the case in its response, and requests that the Commission find inadmissible the portions of the petition concerning the death penalty.

Petitioners' Response

21. Petitioners' observations in reply to this interim response, dated October 31, 1991, strongly reiterated the need for a Commission investigation of the human

rights violations charged. Further, they maintain: "The grant of clemency has not mooted any of the issues concerning the human rights violations alleged in the petition and supplemental petition."

22. Petitioners argue that a determination as to mootness would be premature, and that a full investigation and exposition of the facts is necessary before issues of mootness can be decided. Petitioners argue that these violations may occur in other cases; that the death penalty issues have ongoing validity in this case, and that the commuted sentences continue to constitute human rights violations.

Additional Information Submitted by Petitioners

23. On February 14, 1992, petitioners submitted additional observations and evidence. The petitioners characterized the acts of the U.S.:

The purpose of the acts was to destroy surviving leadership of the former government of Grenada; to create a false historical basis to justify the illegal invasion and to serve as a warning to other governments in the Caribbean and throughout the Americas. The means employed included the suspension of constitutional and other legal protection which guaranteed a fair trial before an independent, competent and impartial constitutional court, torture of the accused to secure false confessions, coercion of witnesses, presentation of false testimony, exclusion of exculpatory testimony and denial of the rights to counsel and presentation of a defense.

24. Petitioners submitted the affidavit of Keith Hyacinth Roberts with this communication. The affidavit contains a factual account contradicting that presented by the prosecution at trial, and statements corroborating information supplied in the affidavit of Errol George (submitted with petitioners' supplemental petition). The petitioners assert that Mr. Roberts' affidavit, if believed, shows at least ten petitioners to be innocent. Mr. Robert's affidavit shows that "the prosecution knowingly presented false testimony" to inculpate petitioners, and "concealed exculpatory evidence."

25. By note dated July 27, 1992, the Commission reiterated its request to the Government to provide information on the case.

The Government's Response

26. The Government filed its response to the petitioners' complaint on September 10, 1992. The Government maintains that the Commission should find the complaint inadmissible pursuant to Article 41.c of its Regulations, because the petitioners' factual assertions are incorrect or unsupported, and because the U.S. Government is not a proper respondent in this case. Additionally, the Government

asserts that an examination of the "international legal validity" of U.S. military actions in Grenada is beyond the scope of the Commission's mandate.

27. Article 41.c of the Commission's Regulations sets forth that the Commission shall declare a petition inadmissible if it "is manifestly groundless or inadmissible on the basis of the statement by the petitioner himself or the government." The Government contends that the petitioners' claims of human rights violations committed by the United States have no basis in fact.

28. The Government refers to a document prepared by the Department of State in 1986 to counter the factual assertions of the petitioners. The Government characterizes the U.S. military action as a rescue mission in response to danger to U.S. citizens there, and in response to a request for assistance from the Governor General, Sir Paul Scoon.

29. The Government denies the allegations that the U.S. "created, selected and financed" the Government in place in Grenada following the invasion, "and improperly influenced and corrupted the judicial procedures which resulted in their convictions and sentences." The Government notes that the interim Advisory Council that governed Grenada until elections could be held was appointed by Governor General Sir Paul Scoon.

30. The Government also denied that it killed "scores of Grenadians," or arrested "several thousand people," or that it removed the Government of Grenada. The Government asserts that the legitimate government was removed by the RMC, and that the RMC was never recognized as the legitimate government of Grenada. The U.S. Government indicates that "54 Grenadians were killed, and 337 wounded, during the operation," and that in fact the Grenadian People's Revolutionary Army was responsible in part for some of those deaths.

31. The Government asserts that the claims against it are unsupported by documentation or testimony of record in the proceedings. The claimants offer only "innuendo, hearsay, conjecture and speculation;" and have failed to establish a credible evidentiary nexus between the allegations and actions of the United States Government in Grenada. As a result, the complaint "falls short of the quantum of credible evidence that would support a finding of admissibility."

32. The U.S. believes that:

The treatment by U.S. armed forces of all Grenadian or other nationals who were either temporarily detained or arrested for security or other lawful reasons was conducted in full accordance with applicable international rules concerning the law of armed conflict, including the rules governing the treatment of civilian detainees and military prisoners.

The United States notes that while it declined to address the international legal validity of petitioners' claims with regard to the arrest and transfer of petitioners, and other U.S. military actions in Grenada in this communication, it reserves its right to provide a response on those issues if necessary. The Government views such issues as beyond the scope of the Commission's mandate as set forth in the Charter, its Statute and Regulations - particularly with regard to non-parties to the American Convention.

33. The United States Government asserts that it is clearly not a proper respondent in this case, as it in no way influenced the conduct or result of petitioners' trial. The Government characterizes the claims as relating to "the criminal trial and due process procedures" available to the petitioners through the judicial system of Grenada. Grenada, the Government points out, has been a sovereign state since its independence in 1974, and the United States acted consistently with respect for that sovereignty with regard to its actions in 1983 and subsequently.

34. The United States Government asserts that it did not approve or pay for prosecution staff, the temporary judges, or support staff; nor did it participate in selecting the non-Grenadian temporary judges or the prosecution staff. The Government notes that the complaint "erroneously implies" that the U.S. participated in negotiations over payment to the temporary judges appointed to preside over the appeal. The Government also notes with regard to the periodic attendance of U.S. Embassy personnel at the trial and appeal, that such occasional monitoring of cases is routine for embassy personnel.

35. The Government, while conceding that official documents were seized in connection with U.S. military action in Grenada, asserts that all documents were returned to the Government of Grenada in June, 1985. The Government contends that this gave the petitioners ample time to request these documents prior to the April, 1986 commencement of proceedings, and that the petitioners never requested that the documents be subpoenaed.

36. The Government reiterated its argument that the death penalty issues in the case were mooted by the grant of clemency, as initially stated in its communication to the Commission of October 22, 1991.

37. The parties presented their positions on the threshold issues raised by this case in a hearing before the Commission on February 25, 1993.

38. The Commission, by a note of April 16, 1993, requested the Government to provide its observations on the merits of the petitioners' substantive claims. This request was reiterated on June 21, 1993. By a note of July 12, 1993, the Government indicated that it intended to present a filing in this case as soon as possible. To date, however, no submission has been received.

ANALYSIS

1. Pursuant to Article 35 of the Commission's Regulations, the issues raised as to the question of admissibility are: whether domestic remedies have been exhausted; whether, as the respondent Government contends, certain portions of the complaint are not susceptible to examination by the Commission; and whether, as the respondent Government contests, grounds for the petition exist or subsist to support admissibility.

2. The petitioners allege that actions of the respondent Government violated their human rights from the time of their arrest, throughout the trial and appeal process. Petitioners filed their claim within six months of the rendering of the appellate judgment by the Grenadian Court of Appeals, the only appeal permitted to petitioners by then-applicable Grenadian law. The petition is not duplicative of one previously before the Commission, nor is it pending before another international governmental organization. Thus the petition is in compliance with Articles 38 and 39 of the Commission's Regulations. The petition also meets the procedural requirements set forth in Article 32.a, .b and .d.

Domestic Remedies

3. Petitioners represent with regard to exhaustion of domestic remedies, as required by Article 37 of the Commission's Regulations, that: "Domestic laws of Grenada do not afford protection of the human rights that have been violated. Such remedies as the government permits under the domestic laws of Grenada have been exhausted." Where a claimant asserts an inability to prove exhaustion, the burden shifts to the Government, through Article 37.3, to show that remedies under domestic law remain to be exhausted. The Government has not asserted that any applicable domestic remedies are available to petitioners.

The Scope of the Commission's Competence to Examine Complaints

4. The jurisdiction of the Commission over member states not party to the American Convention derives from the relevant provisions of the Charter, and from the Commission's prior practice. Article 111 of the Charter specifies that the "structure, competence and procedure" of the Commission shall be that set forth in the American Convention. Article 1 of the Commission's Statute, reflecting Charter Article 111, sets forth the responsibility of the Commission to promote and protect human rights. For states not parties to the American Convention, the human rights to be protected are specified to be those contained in the American Declaration. The Declaration is a source of international obligation for the member states who have not ratified the Convention.

5. The role of the Commission is further defined in its Statute and Regulations. In the case of non-ratifying member states, Article 20 of the Commission's Statute expressly authorizes the consideration of communications, the requesting of information from the government concerned, and the making of recommendations in response thereto. Also with respect to non-ratifying member states, Article 20 obliges the Commission to pay special attention to the observance of the human rights referred to in Declaration Articles I, 11, III, IV, XVIII, XXV, and XXVI. The petitioners have alleged a number of violations by the United States, including violations of Declaration Articles 1, XVIII, and XXV. Article 51 of the Commission's Regulations sets forth:

The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man, concerning member states of the Organization that are not parties to the American Convention on Human Rights.

Within its mandate the Commission receives petitions alleging violations of human rights, evaluates the allegations to determine if a cognizable violation of a protected human right is set forth, and examines the petition for procedural compliance; petitions not impeded by substantive or procedural impediments are then considered.

6. In this respect, the Government's contention that an evaluation of the "international legal validity" of the "arrests, transfer, or other U.S. military actions in Grenada" exceeds the mandate of the Commission is inapposite. The claimants have alleged violations of rights set forth in the American Declaration; the admissibility of a claim in that respect is subject to the Commission's consideration.

Factual Basis for Admissibility

7. The Government has asserted that the petition should be declared inadmissible as groundless pursuant to Article 41.c of the Commission's Regulations. Given the bare nature of a number of the petitioners' factual allegations and the corresponding contradictions of the respondent Government, the petitioners have alleged or shown a sufficient causal nexus on which to base consideration of possible violations by the Government only as to the claims concerning their arrest, and presumed detention incommunicado. Such claims implicate Article I, the right to life, liberty and personal security, in terms of their arrest and detention; Article XVI, the right to recognition of juridical personality and civil rights, in terms of the extra-judicial nature of the arrests and detention; and Article XXV, the right of protection from arbitrary arrest, in terms of non-compliance with procedures established by pre-existing law. Incommunicado detention denies the opportunity to have the legality of detention ascertained.

8. The petitioners have set forth in their submissions that they were arrested and detained by U.S. military forces before they were turned over to the custody of Grenadian authorities. The submissions further indicate that at least two of the petitioners were held incommunicado for a period of some days.

9. The U.S. has set forth that it:

rejects petitioners' arguments that their arrests by U.S. armed forces and their subsequent transfer to Grenadian custody violated international law. The treatment by U.S. armed forces of ...[those] either temporarily detained or arrested for security or other lawful reasons was conducted in full accordance with applicable international rules concerning the law of armed conflict, including the rules governing the treatment of civilian detainees and military prisoners.

The U.S. withheld further information on this subject, citing its contention that the actions of its military in Grenada are not subject to the Commission's examination. The facts put forth concerning the arrest and detention of the petitioners, uncontradicted by other evidence of which the Commission is aware, provide a basis to support the admissibility of petitioners' claims concerning their arrest and detention.

RESOLVES

1. To declare that the claims in Case 10.951 concerning the arrest and incommunicado detention of the petitioners by United States forces are admissible. The other claims raised by petitioners are inadmissible.

2. To recommend that the Government conduct a comprehensive review and investigation of these claims concerning the arrest and detention of the petitioners, and provide the Commission with the information necessary for it to evaluate the allegations raised by the petitioners.

3. To recommend that the Government supply this information to the Commission within 90 days.

4. To declare that the Commission will consider the merits of this case during its next period of sessions.

5. To transmit this resolution to the Government of the United States and to the petitioners.