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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 21/05; Petition 12.269
Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Dexter Lendore v. Trinidad and Tobago
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez
Dated:	25 February 2005
Citation:	Lendore v. Trinidad and Tobago, Petition 12.269, Inter-Am. C.H.R., Report No. 21/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: a firm of solicitors "Collyer-Bristow"
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## I. SUMMARY

1. On September 15, 1998, the Inter American Commission on Human Rights (the “Commission”) received a petition from Collyer-Bristow, a firm of solicitors in London U.K (“the Petitioners”) against the Government of Trinidad and Tobago (“Trinidad and Tobago” or “the State”). The petition was presented on behalf of Dexter Lendore, who had previously been detained on death row at the state prison, 103a Frederick Street, Port of Spain, Trinidad and Tobago. The petition states that on July 16, 1998, the Judicial Committee of the Privy Council dismissed Mr. Lendore’s petition for Special Leave to Appeal as a Poor Person against the dismissal by the Trinidad and Tobago Court of Appeal of his conviction for murder and the death sentence. The petition also indicates that on May 4, 1998, Mr. Lendore’s sentence was commuted to seventy five years imprisonment with hard labor.

2. The petition alleges that the State is responsible for violations of Mr. Lendore’s rights under Articles 5 and 8 of the American Convention on Human Rights (the “American Convention” or the “Convention”). It is stated in particular that the conditions prevailing at Mr. Lendore’s detention, prior to his committal and trial and after his conviction, as well as the length of time that Mr. Lendore was held in custody prior to his trial and the time spent as a death row inmate awaiting his execution, violated Article 5 of the Convention. The Petitioners also claim that the State is responsible for violations of Mr. Lendore’s right to a fair trial under Article 8 of the Convention, as a result of the trial judge’s failure to order separate trials of Mr. Lendore and his co-defendants, alleged misdirections by the trial judge, inadequate legal representation provided to Mr. Lendore, and the lack of effective recourse on appeal against the trial judge’s misdirections by the invocation of a statutory provision. As of the date of this report,

the Commission had not received a response from the State to Mr. Lendore's petition. Finally, the Petitioners argue that Mr. Lendore has exhausted all domestic remedies available to him and therefore that the claims in the petition are admissible.

3. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to admit the claims in the present petition pertaining to Articles 1(1), 2, 5, 8 and 25 of the Convention and Articles XVIII, XXIV, XXV and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"), to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. Following receipt of the petitioner's petition on September 28, 1998, the Commission transmitted the pertinent parts of the Petition to the State. The Commission requested the State's observations on the petition within 90 days as established by the Commissions prior regulations. [FN1] Also by note of the same date, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State and that they would be advised of any reply that the State might make.

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[FN1] During its 109th special session in December 2000, the Commission approved the Rules of Procedure of the Inter American Commission on Human Rights which replaced the Commission's prior Regulations of April 8, 1980. Pursuant to Article 78 of the Commission's Rules of Procedure, the Rules entered into force on May 1, 2001.  
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5. By communication dated April 28, 2000 and received on May 9, 2000, the State acknowledged receipt of the Commission's communication dated April 20, 2000.

6. In a note dated August 8, 2000, the Commission reiterated to the State its previous request for information relevant to the case within 30 days of the Commission's communication. As of the date of present report, the Commission has not received any information or observations from the State concerning Mr. Lendore's petition.

## III. POSITIONS OF THE PARTIES

### A. Position of the Petitioners

7. The petition states that on December 8, 1993, Dexter Lendore together with his co-defendants Andrew Andy Paul Douglas and Keith Ling, was convicted of the September 10, 1989 murder of Lall Sookdad and sentenced to death. The petition also states that on May 4, 1998, Mr. Lendore's death sentence was commuted to 75 years with hard labor.

8. In relation to the admissibility of the complaints, the Petitioners provided information indicating that the alleged victim unsuccessfully appealed his conviction to the Trinidad and Tobago Court of Appeal, which dismissed his appeal on February 5, 1998. He subsequently sought Special Leave to Appeal as a Poor Person to the Judicial Committee of the Privy Council, the highest appellate body in Trinidad and Tobago, which denied his petition on July 17, 1998.

9. The Petitioners also indicate that Mr. Lendore did not pursue Constitutional Motions in the domestic courts of Trinidad and Tobago because he was indigent and because legal aid is not available for such motions in Trinidad and Tobago.

10. In addition, the Petitioner has indicated that the subject matter of the complaint has not been submitted for examination under any other procedure of international investigation or settlement to any other international organization.

11. With respect to the merits of their complaints against the State, the Petitioners claim the following:

(a) The physical conditions of Mr. Lendore's detention violated Article 5(1) and (2) of the Convention. In particular, the Petitioners claim that following Mr. Lendore's arrest in 1989, he was placed in a 9" x 6" cell at the State Prison in Port of Spain with an average of 10 other prisoners, who shared a single plastic bucket for use as a toilet and were forced to defecate and urinate in the cell itself. Mr. Lendore was also forced to sleep on the floor and spent 23 hours of the day in these conditions. From his committal in January 1991 to his conviction and sentence on December 8, 1993, Mr. Lendore is alleged to have been held in similar conditions at Golden Grove Prison, Arouca, where he shared a cell with 5 to 7 inmates at a time. Further, the petition indicates that Mr. Lendore spent 4 ½ years on "death row" awaiting his execution, before his sentence was commuted to 75 years hard labor on May 4, 1998. Since the commutation of his sentence, Mr. Lendore has shared a cell at the State Prison in Port of Spain with 10 other inmates, with one slop bucket shared by all inmates that regularly overflows, resulting in grossly unhygienic conditions. The Petitioners also state that Mr. Lendore has sought medical care in prison and has been refused.

(b) The Petitioners claim that the inordinate length of time that Mr. Lendore spent in detention awaiting trial, in addition to his time on "death row" awaiting his execution, both contravene Article 5 (1) and (2) of the Convention.

(c) The petition alleges that the State failed to promptly provide Mr. Lendore with legal counsel, and that when he was eventually provided with legal counsel appointed by the State's Legal Aid Authority, his representation at both trial and appeal was inadequate in contravention of Article 8(2)(c) and (e) of the Convention. In particular, according to the Petitioners, Mr. Lendore did not see a lawyer until 10 days after his arrest at his preliminary hearing. The Petitioners also state that at no stage prior to Mr. Lendore's trial did his counsel hold a conference with him, and that his first conference with his lawyer took place on the seventh day of the trial and lasted 20 minutes. It is similarly alleged that Mr. Lendore had no opportunity to consult with his state-appointed appeal attorney.

(d) The Petitioners claim that the State is responsible for violations of Mr. Lendore's rights under Article 8(1) and (2) of the Convention for the reason that the trial judge failed to order separate trials for Mr. Lendore and his co-defendant in circumstances where their defenses might

have been prejudicial to each other and, further, that the trial judge misdirected the jury on certain principles of law.

(e) Finally the petition alleges that Mr. Lendore's right to appeal under Article 8(2)(h) of the Convention was breached in that he was not provided with an effective opportunity to challenge the trial judge's alleged misdirections on appeal. In particular, the Petitioners claim that by virtue of a stipulation in its rules, the Court of Appeal of Trinidad and Tobago was able to substitute its own construction on the verdict of the case "in the interest of justice," in circumstances where the trial judge had misdirected the jury in law.

#### B. Position of the State

12. As indicated above, by communication dated April 28, 2000 and received on May 9, 2000, the State acknowledged receipt of the Commission's communication dated April 20, 2000. Apart from this communication, the Commission has not received any information or observations from the State respecting this petition.

### IV. ANALYSIS

#### A. Competence of the Commission

13. The Republic of Trinidad and Tobago became a party to the American Convention on Human Rights when it deposited its instrument of ratification of that treaty on May 28, 1991.[FN2] Trinidad and Tobago subsequently denounced the American Convention by notice given one year in advance on May 26, 1998 in accordance with Article 78 of the American Convention on Human Rights, which provides as follows:

78 (1) The State Parties may denounce this Convention at the expiration of a five year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

(2) Such denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of renunciation.

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[FN2] Basic Documents Pertaining to Human Rights in the Inter - American System, OEA/Ser.L/I.4 rev.8 (22 May 2001), p. 48.

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14. By the plain terms of Article 78(2), states parties to the American Convention have agreed that a denunciation taken by any of them will not release the denouncing state from its obligations under the Convention with respect to acts taken by that state prior to the effective date of the denunciation that may constitute a violation of these obligations. As the Commission has held previously[FN3], a state party's obligations under the Convention encompass not only those provisions of the Convention relating to the substantive rights and freedoms guaranteed

there under. They also encompass provisions relating to the supervisory mechanism under the Convention, including those under Chapter VII of the Convention relating to the jurisdiction, functions and powers of the Inter American Commission on Human Rights.[FN4] Notwithstanding Trinidad and Tobago's denunciation of the Convention therefore, the Commission will retain jurisdiction over complaints of violations of the Convention by Trinidad and Tobago in respect of acts taken by that State prior to May 26, 1999. Consistent with established jurisprudence,[FN5] this includes acts taken by the State prior to May 26, 1999, even if the effects of those acts continue or are manifested until after the date.

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[FN3] See, e.g., Case 12.342, Report 89/01, *Balkissoon Roodal v Trinidad and Tobago*, Annual Report of the IACHR, para. 23.

[FN4] See similarly I/A Court H.R., *Baruch Ivcher Bronstein v Peru*, Jurisdiction, Judgment (24 September 1999), para. 37 ( noting that the obligations of State Parties to the American Convention on Human Rights to guarantee compliance with its provisions applies both to the substantive and procedural norms under the treaty).

[FN5] According to the jurisprudence of the Inter American Court and Commission and that of other international human rights tribunals, human rights instruments may properly be applied in respect of acts that arose prior to the ratification of those instruments but which are continuing in nature and whose effects persist after the instruments' entry into force. See, e.g., I/A Court H.R., *Blake Case*, Preliminary Objections, Judgment of July 2, 1996, Series C N° 27, paras. 33-34 and 46; IACHR, *Joao Canuto de Oliveira v Brasil*, Report No 24/98, Annual Report of the IACHR 1997, paras. 13-18. See similarly Eur. Court H.R., *Papamichalopoulos et al v Greece*, June 24, 1993, Series A No 260-B, pp 69-70, 46.

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15. In respect of acts taken by the State wholly after May 26, 1999, the State remains bound by the American Declaration of the Rights and Duties of Man and the Commission's authority to supervise the State's compliance with that instrument, having deposited its instrument of ratification of the OAS Charter on March 17, 1967 and hereby becoming an OAS Member State.[FN6]

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[FN6] See Statute of the IACHR, Article 20 (providing in respect of those OAS member states that are not parties to the American Convention on Human Rights that the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission , and to make recommendations to such states , when it finds this appropriate , in order to bring about more effective observance of fundamental human rights). See also I/A Court H.R., *Advisory Opinion OC-10/89 Interpretation of the American Declaration of the Rights and duties of Man Within the Framework of Article 64 of the American Convention on Human Rights* , July 14, 1989, Ser A No 10 (1989), paras. 35-45; I/A Comm. H. R., *James Terry Roach and Jay Pinkerton v United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

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16. In the present case, the information available indicates that a preponderance of the events described in Mr. Lendore's petition allegedly occurred prior to May 26, 1999, although some acts may have occurred prior to May 26, 1999 but continued or had their effects manifested after that date. These circumstances raise the possible application of both the American Convention and the American Declaration to the claims raised by Mr. Lendore in his petition. The Commission notes in this regard that, while the Petitioners have not specifically alleged violations of the American Declaration in their petition, the Commission has the authority and the duty to apply the juridical provisions relevant to a proceeding even where the parties do not expressly invoke them, by reason of the general principle of law *iura novit curia*.<sup>[FN7]</sup>

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[FN7] See I/A Court H.R., Velasquez Rodriguez Case, Judgment of July 29, 1988, Ser. S N° 4 (1988), para. 163.

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17. In light of the nature of the Petitioners' allegations, the Commission considers that it is only through the analysis of the merits of the Petitioners' claims that it may properly determine the nature and extent of any acts for which the State may be responsible and accordingly ascertain the applicability of the American Convention or the American Declaration to those acts. The Commission therefore finds that it is competent to consider Mr. Lendore's complaints under both instruments, and will join to the merits of the case determination of the specific applicability of either or both the American Convention or the American Declaration to each of the claims raised by the alleged victims.

## B. ADMISSIBILITY OF THE PETITION

### 1. Duplication of Procedures

18. According to the Petitioners, the matters complained of in this petition have not previously been submitted for examination by any other international organization. The State has not provided any observations on the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under Articles 46(1)(c) or 47(d) of the Convention or Article 33 of the Commission's Rules of Procedure.

### 2. Exhaustion of Domestic Remedies

19. Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure specify that in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law. The jurisprudence of the inter American system makes clear, however, that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Inter-American Court of Human Rights, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable.<sup>[FN8]</sup> In the face of such a

waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might properly be raised by a state relating to the exhaustion of domestic remedies.

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[FN8] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No 25, para. 40

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20. In the present case, the State has failed to provide any observations or information respecting the admissibility of Mr. Lendore's claims, and has thereby implicitly or tacitly waived its right to object to the admissibility of claims in the petition based upon the exhaustion of domestic remedies requirement.

21. Moreover, the information provided by the Petitioners verifies that Mr. Lendore has pursued all post-conviction appeals before the domestic court of the domestic courts in Trinidad and Tobago concerning the complaints raised before the Commission, with the Judicial Committee of the Privy Council having dismissed Mr. Lendore's petition for special leave to appeal on July 16, 1998. In addition, the Commission's previous jurisprudence indicates that Mr. Lendore, as an indigent person, would not be required to pursue a constitutional motion before the courts in Trinidad and Tobago because a motion raising issues of the nature in this petition is sufficiently complex to require legal assistance and because, as the Petitioners have submitted, Trinidad and Tobago does not provide legal aid to indigent defendants to pursue constitutional motions.[FN9] In these circumstances, therefore, the Commission finds that Mr. Lendore's claims are not barred from consideration under Article 46(1)(a) of the Convention or Article 31(1) of the Commission's Rules of Procedure.

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[FN9] See similarly Case 11.816, Report 43/98, Haniff Hilaire v Trinidad & Tobago, Annual Report of the IACHR, 1998, paras. 15-17.

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### 3. Timeliness of the Petition

22. In the petition under consideration, the Commission has concluded that the State tacitly renounced its right to assert an objection to failure to exhaust domestic remedies, as a result of which the requirements of Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure are not applicable. However, the provisions of the Convention and the Commission's Rules of Procedure requiring the prior exhaustion of remedies and the lodging of the petition within a period of six months from the date of final judgment of the domestic court are independent. The Commission must therefore determine whether the petition under review was presented within a reasonable period. In that connection, the Commission observes that the original petition was received on September 15, 1998, and the last decision of the domestic court was issued on July 16, 1998. The Commission therefore considers that the petition was lodged within a reasonable period of time.

#### 4. Colorable Claim

23. Article 47(b) and (c) of the Convention and Article 34 of the Commission's Rules of Procedure require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention or other applicable instruments, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

24. The Petitioners allege that the State is responsible for violations of Mr. Lendore's rights under Articles 5 and 8 of the Convention, the particulars of which are summarized in Part III.A above. The State has failed to provide any observations or information on the violations alleged by Mr. Lendore.

25. Based upon the information provided by the Petitioners, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations, that if proved, tend to establish violations of the rights guaranteed by Articles 5 and 8 the Convention and, further, may also disclose infringements of the right to judicial protection under Article 25 of the Convention together with the State's obligations under Article 1(1) and 2 of the Convention. To the extent that the provisions of the American Declaration may apply to Mr. Lendore's complaints in accordance with the analysis in Part IV.A above, the Commission similarly finds that the factual allegations in the Petitioners' petition, if proved, tend to establish violations of the right to a fair trial, the right of petition, the right to humane treatment and the right to due process of law protected under Articles XVIII, XXIV, XXV and XXVI of the American Declaration. Consequently, the Commission finds that the Petitioners' claims are not precluded from consideration under Article 47(b) or (c) of the Convention or Article 34 of the Commission's Rules of Procedure.

#### V. CONCLUSION

26. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention and Articles 31 to 34 of the Commission's Rules of Procedure.

27. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the claims in the petition admissible with respect to Articles 1(1), 2, 5, 8, 25 of the Convention and Articles XVIII, XXIV, XXV and XXVI of the American Declaration.
2. To give notice of this decision to the State and to the Petitioners.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 25th day of the month of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez, Commissioners.