

REPORT No. 131/11¹

PETITION 593-11
ADMISSIBILITY
KEVIN COOPER
UNITED STATES
October 19, 2011

I. SUMMARY

1. On April 29, 2011, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by Norman C. Hile and Katie C. De Witt of *Orrick, Herrington & Sutcliffe LLP* (hereinafter “the petitioners”) against the United States of America (hereinafter “the United States” or “the State”), on behalf of Kevin Cooper (hereinafter “the alleged victim” or “Mr. Cooper”) who, at the time of its submission, was deprived of his liberty on death row in the state of California since 1985.

2. The petitioners contend that Mr. Cooper, an Afro-descendant, was sentenced for a crime he did not commit. They state that, because of the heinous nature of the crime and severe deficiencies in the police investigation, the State focused all its efforts on compiling evidence to implicate the alleged victim and ignored evidence that proved that the real perpetrators were three white men. The petitioners assert, *inter alia*, that the State introduced false evidence, manipulated the testimony of one witness and concealed exculpatory information. They further allege that the lawyer representing Mr. Cooper was ineffective and that the atmosphere at the trial was charged with racial discrimination. As of the adoption of the present report, the State had not yet presented its response to the petitioners’ allegations.

3. Without prejudging the merits of the complaint and after examining the position of the petitioners in compliance with the requirements set forth in articles 31 to 34 of its Rules of Procedure, the Inter-American Commission decides to declare the case admissible for purposes of examining the alleged violation of the rights recognized in articles I, II, XVIII and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”). The IACHR also decides to notify the parties of this decision, to publish it and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The Inter-American Commission received the petition on April 29, 2011 and on June 23 of that year forwarded copies of the relevant parts of the petition to the State, giving it two months in which to submit its response. This request was reiterated on September 2, 2011. As of the date of adoption of this report, the State had not submitted its response.

Precautionary measures

5. By a note dated August 29, 2011, the IACHR notified the State that precautionary measures had been granted on behalf of the alleged victim and requested a stay of execution until the IACHR had an opportunity to issue its decision on the merits of the petition.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

¹ In keeping with Article 17(2) of the Inter-American Commission’s Rules of Procedure, Commissioner Dinah Shelton, a United States citizen, did not participate in the deliberations or decision of this case.

6. As indicated in the petition, Mr. Cooper, an Afro-descendant, was sentenced to death on March 1, 1985, for a crime he allegedly did not commit. Subsequent to his conviction and sentencing, the alleged victim filed seven state habeas petitions; at least one writ of mandate with the California Supreme Court; three federal habeas petitions; eight petitions for writs of certiorari with the Supreme Court of the United States; and two habeas petitions filed directly with the United Supreme of the Court States. All the appeals and petitions were denied. The petitioners also state that Mr. Cooper later filed a motion for further post-conviction DNA testing in the San Diego Country Superior Court based upon a newly developed test that would allow for new DNA information to be obtained from degraded samples. They point out that the motion was denied on January 14, 2011; eliminating Mr. Cooper's last avenue to develop new evidence with which to request a successive habeas petition to challenge his conviction.

7. According to the information supplied by the petitioners, on June 2, 1983 the alleged victim escaped from a minimum-security prison in San Bernardino County, California, where he was serving a sentence for burglary. On his first day on the run, he hid in an abandoned house in a rural residential area and remained there until 8:30 p.m. on June 4, whereupon he proceeded to make his way to the Mexican border. The petitioners report that at some point between 9:00 p.m. on June 4 and the morning of June 5, in a nearby house, a white family composed of a couple and two children -a girl and a boy- and a child, who was a house guest, were all attacked. The child, the couple and their daughter were brutally murdered with a hatchet, a knife and an ice pick. The sole survivor was the couple's eight-year-old son.

8. The petitioners contend that faced with the heinous nature of the crime and severe deficiencies in the police investigation, when the San Bernardino County Sheriff's Department (hereinafter, the "Sheriff's Department") determined that Mr. Cooper, an Afro-descendant fugitive, had been in the vicinity of the crime, it immediately focused all its attention on compiling evidence to convict him. They state further that the Sheriff's Department ignored all information tending to show that the crime had actually been committed by three white men. The petitioners assert that the Sheriff's Department manipulated and planted evidence against the alleged victim and concealed exculpatory evidence to ensure Mr. Cooper's conviction and thus cover up its own incompetence.

9. The petitioners contend that the United States violated a number of Mr. Cooper's human rights, recognized in the following articles of the American Declaration: Article I (right to life, liberty and personal security) owing to the alleged wrongful conviction, the alleged victim's incarceration since 1985, and his impending sentence of death; article XVIII (right to a fair trial), for the alleged introduction of false evidence and failure to disclose exculpatory information; Article XXVI (right to due process of law) for, *inter alia*, the alleged ineffective assistance of counsel; and Article II (right to equality before law) owing to the State's alleged failure to protect Mr. Cooper from the atmosphere of racial discrimination that prevailed during the trial.

10. As for the alleged violation of the right to a fair trial, the petitioners point out that the San Bernardino County District Attorney (hereinafter "the District Attorney") presented false evidence at trial. They assert that the District Attorney manipulated the testimony of the son of the murdered couple, who was the sole survivor of the crime and who, immediately after the crime, had allegedly identified three white men as his attackers. Furthermore, after seeing a photograph of Mr. Cooper on television, the child had remarked, on at least two occasions, that the alleged victim was not the person who committed the murders. Nevertheless, at trial, he testified that all he saw was a shadow.

11. The petitioners also contend that the County Detective committed perjury when he testified at trial that the surviving child did not refer to multiple assailants during his formal June 14, 1983, interview. However, the psychologist who was assigned to attend the interview noted at least five instances where the child referred to his attackers in plural. The petitioners state further that the laboratory results were manipulated by the Sheriff's Department.

12. As for the alleged failure to disclose exculpatory information, the petitioners observe that the District Attorney did not disclose the fact that a former County Detective learned that on the night of the crime three white men wearing bloodstained clothing were seen in a bar near the home where the

crime was committed. That information had allegedly been reported to the head of the investigation. The petitioners also assert that two bloodstained shirts were discarded near the crime scene, which the petitioners argue would constitute further proof that there was more than one perpetrator. The alleged victim was supposedly not told that the type of shoes that left shoe prints at the crime scene were not special prison issued shoes as asserted by the District Attorney, but were rather widely available to the public through retail sales.

13. As for the violations of the right to due process, the petitioners claim that the attorney representing Mr. Cooper was ineffective. They point out, *inter alia*, that defense counsel refused to accept co-counsel or paralegal help to process the vast amounts of information associated with this case, despite the fact that it was a very complex case. Their contention is that defense counsel's refusal to accept that help had profound adverse consequences for the alleged victim in the instant case. The petitioners also assert that, as recognized by five federal judges of the United States Court of Appeals for the Ninth Circuit in *Cooper v. Brown*,² the Federal District Court failed in the conduct of the post-conviction proceedings. The petitioners state that a newly discovered post-conviction witness had allegedly been intimidated by a police officer dressed in civilian clothes, who warned the potential witness not to get involved in the proceedings in the Cooper case.

14. Finally, the petitioners allege that the alleged victim's trial was conducted in a heated atmosphere of racial discrimination. They state that this racially charged atmosphere arose after Mr. Cooper, an Afro-descendant male, was arrested for the vicious murder of a white family and their young guest in an affluent Arabian horse ranching community. The petitioners contend that the racial hatred toward the alleged victim was openly expressed as demonstrated by the hanging of a gorilla in effigy in front of the court house with a sign around its neck stating "hang the nigger". The petitioners conclude that the State failed to protect Mr. Cooper from the consequences of that racial discrimination, which they contend violated his right to equal protection.

15. Based on the foregoing, the petitioners argue that the State violated the rights recognized in articles I, II, XVIII and XXVI of the American Declaration, to the detriment of Kevin Cooper.

B. Position of the State

16. The State has not submitted its response to the petitioners' allegations.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

17. Under Article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights, the petitioners are, in principle, authorized to lodge petitions with the IACHR. The alleged victim named in the petition is an individual person whose rights under the American Declaration the United States undertook to respect and guarantee. As for the State, the Inter-American Commission observes that under the OAS Charter, Article 20 of the Statute of the IACHR and Article 51 of its Rules of Procedure, the United States is bound by the obligations that the American Declaration imposes. The United States has been a member state of the Organization of American States since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter,³ and has been subject to the jurisdiction of the IACHR since 1959, the year in which this body was created. Therefore, the Inter-American Commission is competent *ratione personae* to examine the petition.

18. The IACHR is also competent *ratione loci* to examine the petition, inasmuch as it alleges violations of rights protected by the American Declaration, said to have occurred within the territory of the United States, a State Party to the Declaration. The Inter-American Commission is competent *ratione*

² The petitioners cite 565 F.3d 581, 583 (9th Cir. 2009).

³ See, also, I/A Court H.R., 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. Advisory Opinion OC-10/89 of July 14, 1989, paragraph 45.

temporis since the obligation to respect and guarantee the rights protected under the American Declaration was already in force for the State on the date on which the events alleged in the petition were said to have occurred. Finally, the Inter-American Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Declaration.

B. Admissibility requirements

1. Exhaustion of domestic remedies

19. Article 31(1) of the Inter-American Commission's Rules of Procedure provides that for a petition to be admissible, the remedies of the domestic legal system must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to give the national authorities the opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the matter before it is taken up by an international body.

20. From the information in the case file, it appears that subsequent to his conviction, Mr. Cooper filed seven state habeas petitions, at least one writ of mandate with the California Supreme Court, three federal habeas petitions, eight petitions for writs of certiorari with the Supreme Court of the United States and two habeas petitions filed directly with the Supreme Court of the United States. All the appeals were denied. Therefore, based on the information available, the IACHR concludes that the petition satisfies the requirement stipulated in Article 31(1) of its Rules of Procedure.

2. Timeliness of the petition

21. Article 32(1) of the Rules of Procedure of the Inter-American Commission requires that petitions be lodged within six months of the date on which the alleged victim was notified of the definitive decision. In the instant case, the most recent appeal was denied by the San Diego County Superior Court on January 14, 2011. The petition with the IACHR was received on April 29, 2011. Therefore, the six-month requirement stipulated in Article 32(1) of the IACHR's Rules of Procedure has been satisfied.

3. Duplication of proceedings and international *res judicata*

22. Nothing in the case file suggests that the subject matter of the petition is pending in another international proceeding for settlement, or is substantially the same as one previously studied by the Commission or by another international body. Hence, the requirements established in Article 33(1) of the Inter-American Commission's Rules of Procedure have been satisfied.

4. Colorable claim

23. Under Article 34(a) of the Rules of Procedure, petitions lodged before the IACHR must state facts that tend to establish a violation of the rights referred to Article 27 therein, and a petition that fails to do so must be found to be "manifestly groundless" or "out of order," pursuant to Article 34(b). The criterion for examining admissibility differs from that used to examine the merits of the petition, since the Inter-American Commission only conducts a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Declaration. This is a cursory analysis that in no way implies a prejudgment or a preliminary opinion on the merits of the matter.

24. Neither the American Declaration nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

25. The petitioners allege that Kevin Cooper was sentenced to death on March 1, 1985, for a crime he did not commit. They state that because of the heinous nature of the crime, coupled with the severe deficiencies in the police investigations, the State concentrated its efforts on implicating the alleged victim, a fugitive Afro-descendant, and ignored any information implicating the three white men. The petitioners also assert that the District Attorney introduced false evidence, manipulated the testimony of the sole survivor of the crime and concealed exculpatory information. They also contend that the legal counsel representing Mr. Cooper was ineffective and that the trial was conducted in a racially charged atmosphere.

26. Given the heightened scrutiny test that it has applied in death penalty cases,⁴ the Inter-American Commission observes that if proven, the petitioners' claims could characterize violations of Articles I, II, XVIII, and XXVI of the American Declaration. The IACHR reiterates its enhanced obligation to verify that any deprivation of life which may occur through the application of capital punishment complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.⁵

27. In conclusion, the Commission decides that the petition is not manifestly groundless or out of order and finds that *prima facie*, the petitioners have complied with the requirements established in Article 34 of the Rules of Procedure of the Inter-American Commission.

V. CONCLUSIONS

28. The Inter-American Commission concludes that it is competent to examine this matter and that the petition is admissible under articles 31 to 34 of its Rules of Procedure. Based on the foregoing arguments of fact and of law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to articles I, II, XVIII and XXVI of the American Declaration;
2. To notify the parties of this decision;
3. To continue with its examination of the merits of the matter;
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C. on the 19th day of the month of October of 2011.
(Signed): José de Jesús Orozco Henríquez, First Vice President, Rodrigo Escobar Gil, Second Vice President; and Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.

⁴ See IACHR, Report No. 60/11, Petitions P-11.575 et al, Admissibility, Clarence Allen Lackey, March 24, 2011, para. 158; Report No. 77/09, Petition 1349-07, Admissibility, Orlando Cordia Hall, United States, August 5, 2009, para. 47; and Report No.61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, para. 66.

⁵ IACHR, Report No. 1/05, Case 12.430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, para. 43.