**FOLLOW-UP FACTSHEET OF REPORT No. 28/09**

**CASE 12.269**

**DEXTER LENDORE**

**(Trinidad and Tobago)**

1. **Summary of Case**

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| **Victim (s):** Dexter Lendore **Petitioner (s):** Saul Lehrfreund (Death Penalty Project)**State:** Trinidad and Tobago**Merits Report No.:** [28/09](http://www.cidh.org/annualrep/2009eng/TT12269eng.htm), published on March 20, 2009**Admissibility Report No.:** [21/05](http://cidh.org/annualrep/2005eng/TT.12269eng.htm), adopted on February 25, 2005**Themes:** Domestic Effects / Right to a Fair Trial / Judicial Protection / Right to Humane Treatment / Right to Personal Liberty / Conditions of Detention / Torture, Cruel, Inhuman and / or Degrading Treatment. **Facts:** This case concerns the detention conditions of Mr. Dexter Lendore, who was detained on death row at the state prison, in Port of Spain, Trinidad and Tobago and whose sentence was subsequently commuted to seventy-five years imprisonment with hard labor.**Rights violated:** The Inter-American Commission concluded that Trinidad and Tobago was responsible for violating Mr. Lendore’s rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of that international instrument, due to its failure to provide him with the assistance of competent and effective counsel during his criminal proceedings; and that the State is also responsible for violating Mr. Lendore’s rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights. |

1. **Recommendations**

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| **Recommendations** | **State of compliance in 2020** |
| 1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation. | Pending compliance |
| 2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore’s conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row. | Pending compliance |
| 3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions. | Pending compliance |

1. **Procedural Activity**
2. In 2020, the IACHR requested updated information on compliance from the State on August 7. The State presented said information on September 3.
3. The IACHR requested updated information on compliance from the petitioners on August 7, and the petitioners presented said information on October 2, 2020.
4. **Analysis of the information presented**
5. The Commission considers that the information provided by the State and the petitioners in 2020 is relevant to update on the follow-up of the case given that it is up to date and comprehensive on measures adopted recently to comply with at least one of the recommendations issued in Report No. 28/09.
6. **Analysis of compliance with the recommendations**
7. **With regards to the first recommendations**,over 2019, the State asserted that Mr. Lendore does not meet the requirements for a re-trial, inasmuch as his motion has been denied twice by the Privy Council. It reported that in 1998, the authorities commuted the death sentence imposed on him to a prison term of 75 years with hard labor. The State remarked that in 2017, as a member of a larger group of persons in the same situation, Mr. Lendore challenged the decision commuting his death sentence on the grounds that that decision had been made through collective examination and on a not case-by-case basis of each person sentenced. The Privy Council denied said appeal and dismissed the argument on the grounds that the decision to commute had taken into consideration the particular situation of each defendant. Lastly, the State noted in its communication that complying with this recommendation would mean accepting that the OAS, through the IACHR, is able to wrongfully strip the Judicial Committee of the Privy Council of its jurisdiction. The State claimed that it does not intend to place the OAS in a position that stands at odds with the sovereign enforcement of its domestic legislation and specified that because Trinidad and Tobago had denounced the American Convention on Human Rights in 1999, the decisions that the IACHR issues are not binding on it.
8. In 2020, the State reiterated the same information provided in 2019.
9. In 2018, the petitioners informed that they have not acted for Mr. Dexter Lendore for a considerable period of time. At the same time, the petitioners presented a judgement of the Judicial Committee of the Privy Council, *Lendore and others v. The Attorney General of Trinidad and Tobago (2017)*,[[1]](#footnote-1)which concerns Mr. Dexter Lendore.In this case, Mr. Dexter Lendore, along with other individuals whose mandatory death sentences had been commuted to life imprisonment or imprisonment for 75 years in Trinidad and Tobago, challenged the constitutionality of the substituted sentences arguing that these sentences were imposed on a broad group of prisoners without consideration of the individual circumstances of each one.
10. In 2019, the petitioners reported that in 1998, Mr. Lendore had benefited from the commutation of the death sentence to a 75-year prison term. They explained that even though the State provides legal assistance services for cases that involve potential human rights violations, the State has still not ordered his release. The petitioners reported to the IACHR that the judgment handed down against Mr. Lendore is still pending an appeal for review by judicial authorities. In 2020, the petitioners informed that they were not aware of any pending appeal since the last available seat for appeal was the Privy Council. They manifested that the decisions of this organ were final, in the absence of fresh evidence and exceptional circumstances justifying reconsideration. Regarding the binding nature of the IACHR recommendations, the petitioners manifested that the State was still party to the American Convention at the time of the victim’s trial and the sentencing and resentencing procedure, being the State obliged to comply with the measures established by the Commission.
11. In addition, the petitioners expressed that the information provided by the State in its diplomatic note was misleading, particularly with respect to the characterization of Mr. Lendore’s appeal to the Privy Council. The petitioners noted that while the Privy Council declined to present the matter to the High Court, it also upheld the Court of Appeal’s findings on the unconstitutionality of the resentencing procedure, as well as the lack of observance of the principles of natural justice. Moreover, the petitioners highlight that the Privy Council also endorsed the decision to remit the case to the Advisory Committee for reconsideration. In this regard, the petitioners informed that none of the applicants had their cases reconsidered by the Advisory Committee, following the Court of Appeal’s decision in 2014, regardless of their numerous requests.
12. The Commission values the information submitted by the petitioners and the State, particularly regarding the commutation of Mr. Lendore’s death penalty conviction to an alternative one. However, it notes that even though the State has processed and settled several legal proceedings, none of them has ensured Mr. Lendore the opportunity for access to re-trial or, should this not be possible, for him to be released from prison and be awarded compensation. The IACHR is expectant to any update on the treatment of Mr. Lendore case before the Advisory Committee or the provision of any other available remedy to review his conviction, in compliance with the right to a fair trial and due process of law. Regarding the statements on the non-binding nature of the IACHR recommendations, the Commission recalls that the American Declaration is recognized as constituting a source of legal obligation for the OAS Member States, including in particular those States that are not parties to the American Convention on Human Rights.[[2]](#footnote-2) Furthermore, pursuant to article 31(1) of the Vienna Convention on the Law of Treaties, Member States are required to apply good faith efforts comply with the recommendations of supervisory bodies such as the Inter-American Commission.[[3]](#footnote-3) Based on the foregoing, the Commission considers recommendation 1 to be pending compliance.
13. **Regarding the second and third recommendation**, the State reported that there are provisions of the law aimed at bringing the legislation of Trinidad and Tobago into line with international standards. Contrary to its earlier position, the State informed in 2020 that there were no legislative provisions to bring the State’s standards of imprisonment into line with international standards. It further noted that there are domestic remedies available that provide for constitutional review and that Mr. Lendore had exercised said right to appeal in 2017 before the Privy Council and “failed”.
14. In 2020, the petitioners did not provide information on compliance with this recommendation.
15. The Commission welcomes the information provided by the State with respect to the current status of the case, as well as the measures adopted by it to ensure compliance with the Merits Report 28/09. However, it notes with concern a setback in the position of the State regarding the adoption of measures to bring in line domestic law with the obligations undertaken by the State in the sphere of international law. In this regard, the IACHR urges the parties to provide comprehensive and up-to-date information on existing laws or policies, the content thereof, as well as any other regulatory initiative to bring the standards of imprisonment of the State in line with international standards. Based on the foregoing, the IACHR considers this recommendation to be pending compliance.
16. **Level of compliance of the case**
17. Based on the foregoing, the IACHR concludes that the level of compliance of the case is pending. Consequently, the Commission will continue to monitor Recommendations 1, 2 and 3.
18. The IACHR invites the State to adopt the necessary measures to fully comply with the recommendations issued in Merits Report 28/09, and to provide up-to-date and detailed information on these measures to the Commission.
19. **Individual and structural results of the case**
20. Given that this case is pending compliance, there are no individual or structural results, which have been informed by the parties.
1. Judicial Committee of the Privy Council, [Lendore and others v. The Attorney General of Trinidad and Tobago (Trinidad and Tobago)](https://www.jcpc.uk/cases/docs/jcpc-2015-0055-judgment.pdf) [2017] UKPC 25 (United Kingdom). [↑](#footnote-ref-1)
2. IACtHR, [Advisory Opinion OC-10/89 Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights](http://www.corteidh.or.cr/docs/opiniones/seriea_10_ing1.pdf), July 14, 1989, Ser. A No. 10 (1989), paras. 35-45. [↑](#footnote-ref-2)
3. IACHR, [Case 12.873, Merits Report No. 44/14, Edgar Tamayo Arias](http://www.oas.org/en/iachr/decisions/2014/USPU12873EN.pdf) (United States), para. 214; IACHR, [Towards the Closure of Guantanamo](http://www.oas.org/en/iachr/reports/pdfs/Towards-Closure-Guantanamo.pdf), 2015, paras. 17-21; IACHR, [Case 12.586, Report No. 78/11, John Doe et al. (Canada)](http://www.oas.org/en/iachr/decisions/2011/CAPU12586EN.doc), para. 129. [↑](#footnote-ref-3)