

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 13/2014**

PRECAUTIONARY MEASURE No. 83-14¹

Matter of Keron Lopez and Garvin Sookram regarding Trinidad and Tobago

~~May 19, 2014~~

I. INTRODUCTION

1. On March 3, 2014 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by Saul Lehrfreund MBE of "Simons Muirhead & Burton" (hereinafter "the applicants"), in favor of Keron Lopez and Garvin Sookram (hereinafter "the proposed beneficiaries"), sentenced to the death penalty in Trinidad and Tobago. The application was submitted in the context of individual petitions P-331-14 and P-360-14, which allege violations of Articles I (right to life), II (right to equality before the law), XXV (right to protection from arbitrary arrest), XVIII (right to a fair trial), and XXVI (right to due process) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). The applicants request the Commission to require Trinidad and Tobago (hereinafter "the State," "Trinidad and Tobago") to stay the execution of the proposed beneficiaries to ensure that the Commission has an opportunity to rule on the merits of the petition and to avoid irreparable harm to the proposed beneficiaries.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that if Keron Lopez and Garvin Sookram are executed before it has an opportunity to examine their petitions, any eventual decision would be rendered moot in respect of the effectiveness of potential remedies, resulting in irreparable harm. Consequently, pursuant to Article 25(1) of the Rules of Procedure, the Commission hereby requests that Trinidad and Tobago take the measures necessary to preserve the life and physical integrity of Keron Lopez and Garvin Sookram until the IACHR has pronounced on their petitions so as not to render ineffective the processing of their cases before the inter-American system.

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

3. According to the request filed by the applicants, Keron Lopez and Garvin Sookram, the proposed beneficiaries, are subject to the death penalty and face the risk of execution by hanging. Therefore, applicants ask that the precautionary measures be issued in "the form of a direction to Trinidad and Tobago that no steps are taken to carry out the proposed beneficiaries' death sentence pending determination of the individual petitions that have been submitted to the IACHR. The information provided by the applicant in the request for precautionary measures may be summarized as follows:

a) On the 31st of July, 2004, Garvin Sookram was charged on an indictment alleging that he had murdered Kerwyn Cyrus (aka Ox) and Kerwyn Hinds (aka Richie) on the 28th of July 2004. On the 28th of November, 2004, Keron Lopez was also charged with murdering Kerwin Cyrus and Kerwin Hind.

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Rose-Marie Belle Antoine, a Trinidad and Tobago national, did not participate in the deliberation or vote on this precautionary measure.

b) On the 12th of January 2009, the trial against the proposed beneficiaries commenced before the Hon. Madame Justice Charles at the Fourth Criminal Court at the Port of Spain Assizes.

c) On the 2nd of March 2009, the proposed beneficiaries were convicted of murder and according to the applicants "the mandatory death sentence by hanging was imposed."

d) The proposed beneficiaries appealed against their conviction. On 20th April 2011, the Court of Appeal of the Republic of Trinidad and Tobago refused their application. The Court accordingly dismissed the appeal against conviction and the mandatory death sentence was affirmed.

e) The proposed beneficiaries instructed "Simons Muirhead and Burton" to provide them with pro bono legal representation in applying to the Judicial Committee of the Privy Council for Permission to Appeal as "financially assisted persons." On 21st February 2014, the Judicial Committee of the Privy Council refused the proposed beneficiaries' application for permission to appeal, stating that "there is no risk that a serious miscarriage of justice has occurred in this case. The trial Judge handled the trial and summing up with great care."

f) In the individual petitions to which this request for precautionary measure is connected, the proposed beneficiaries claim to be victims of violations of the rights set forth in articles I, II, XXV, XVIII and XXVI of the American Declaration of the Rights and Duties of Man. Applicants state that "The Petitioner[s] complain that the mandatory death sentence imposed by the penal law of Trinidad on every person convicted of the crime of murder, violates the right of life (Article I) and involves the infliction of cruel, infamous or unusual punishment (Article XXVI) and deprives [them] of the right to be treated with dignity and respect (Article XXV)."

g) Applicants also state that the proposed beneficiaries "further complain that the absence of any hearing to enable an objective and proportionate decision on whether the death penalty should be imposed on the facts of [their] case, violates [their] rights to equality before the law (Article II) and deprives [them] of a fair trial on the question of whether [they] should be executed." Also, the applicants allege that the proposed beneficiaries did not testify or call witnesses at the trial, relying on his statements at the police and would be deprived of individualized sentencing based upon their personal circumstances on those crimes.

4. In view of the allegations brought forth by the applicants, on March 27, 2014, the Inter-American Commission requested information from the State in the following terms: i) observations on the precautionary measures request; ii) the current stage of the criminal proceeding against the proposed beneficiaries; iii) whether there is a date set for the execution of the proposed beneficiaries; and iv) copies of the relevant judicial decisions with regards to the precautionary measures request.

5. On April 9, 2014, the IACHR reiterated the request for information to State. To the date, the Commission has not received any response from the State.

III. ANALYSIS OF THE ELEMENTS OF GRAVITY, URGENCY AND IRREPARABILITY

6. The mechanism of precautionary measures is part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, those set forth in the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

7. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

8. In the present matter, the Commission observes that the State has not replied to the request for information made by the IACHR on March 27, 2014, and reiterated on April 9, 2014, intended to obtain the State's observations regarding the request for precautionary measures. In this scenario, even though the lack of response from a State is not enough to grant precautionary measures, it constitutes an element to be taken into consideration when making a decision. In this regard, the lack of information from the State makes it impossible for the Commission to be informed about any measures implemented, and in general, about the State's position on the allegations made.

9. The present request for precautionary measures seeks to protect the right to life of Keron Lopez and Garvin Sookram, who in 2009 were sentenced to death in Trinidad and Tobago. The

request for precautionary measures is related to the individual petitions P-331-14 and P-360-14, which alleges violations of Articles I (right to life), II (right to equality before the law), XXV (right to of protection from arbitrary arrest), XVIII (right to a fair trial), and XXVI (right to due process) of the American Declaration of the Rights and Duties of Man. The applicants request the Commission to require Trinidad and Tobago to stay the execution to ensure that the Commission has an opportunity to rule on the merits of the petition and to avoid irreparable harm to the proposed beneficiaries.

10. In the present matter, the requirement of seriousness is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the possible application of the death penalty in Trinidad and Tobago. In this regard, it has been alleged that the criminal proceedings against the proposed beneficiaries did not observe the rights protected under the international law of human rights, particularly the right to life, fair trial, and judicial protection under Articles I, II, XVII, XVIII and XXVI of the American Declaration as well as the risk of obstructing the right to file petitions contained in Article 30.3 of the Rules of Procedure.

11. Regarding the requirement of urgency, the Commission notes that Keron Lopez and Garvin Sookram could be executed, so that the loss of life of the proposed beneficiaries could materialize in the near future. Accordingly, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in the petitions prior to that date. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures and the lack of response from the State in the current matter.

12. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the possible implementation of the death penalty; the loss of life imposes the most extreme and irreversible possible situation. Regarding the precautionary nature, the Commission considers that if Keron Lopez and Garvin Sookram are executed before the Commission has an opportunity to examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

13. The Commission has repeatedly urged the OAS Member States that still have the death penalty to abolish it or, at least, to impose a moratorium to its application. In addition, the IACHR has recommended the States to ratify the Protocol to the American Convention to Abolish the Death Penalty; to refrain from any measure that would expand the application of the death penalty or reintroduce it; to take any measures necessary to ensure compliance with the strictest standards of due process in capital cases; to adopt any steps required to ensure that domestic legal standards conform to the heightened level of review applicable in death penalty cases, and to ensure full compliance with decisions of the Inter-American Commission, and specifically with decisions concerning individual death penalty cases and precautionary measures.

IV. BENEFICIARIES

14. The request was submitted on behalf of Keron Lopez and Garvin Sookram, who are fully individualized in the documents submitted in this proceeding.

V. DECISION

15. In view of the above-mentioned information, taking into account the human rights obligations of Trinidad and Tobago as a Member State of the OAS, and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter², and in the American Declaration of the Rights and Duties of Man, the Commission considers that this matter meets *prima facie* the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of Trinidad and Tobago to:

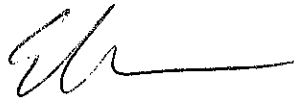
Abstain from executing Keron Lopez and Garvin Sookram until the IACHR has ruled on the merits of the individual petitions filed on their behalf.

16. The Commission also requests the Government of Your Excellency to report, within 10 days from the date of this resolution, on the adoption of the precautionary measures required and update such information regularly.

17. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Declaration and other applicable instruments.

18. The Commission orders the Executive Secretariat of the Inter-American Commission to notify the Government of Trinidad and Tobago and the applicants of this resolution.

19. Approved on the 19th day of May, 2014 by: Tracy Robinson, President; Felipe González, Second Vice-President; Commissioners José de Jesús Orozco, Rosa María Ortiz, James L. Cavallaro and Paulo Vannuchi.



Elizabeth Abi-Mershed
Assistant Executive Secretary

² Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm