

June 23, 2021

**REF.: Case Nº 12.145**  
**Kevin Dial and Andrew Dottin**  
**Trinidad and Tobago**

Mr. Secretary:

I have the pleasure to address you, on behalf of the Inter-American Commission on Human Rights, in order to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights, Case No. 12.145 - Kevin Dial and Andrew Dottin, of the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago") regarding the international responsibility of the State for the imposition of the mandatory death penalty against Kevin Dial and Andrew Dottin.

Kevin Dial and Andrew Dottin were arrested by the police on February 24, 1995, and charged with the February 20, 1995, murder of Junior Baptiste, primarily based on the identification evidence of Baptiste's elder brother. On January 21, 1997, they were convicted and sentenced to the mandatory death penalty by the High Court of Justice in Port of Spain. The convictions were affirmed by the Court of Appeal on October 16, 1997. Further appeals to the Board of the Privy Council were dismissed.

According to the information provided by the petitioners, not contested by the State, on January 12, 2005, state authorities confirmed in writing that the Government of Trinidad and Tobago had accepted the Judicial Committee of the Privy Council ("Privy Council" or JCPC) decision in Charles Matthew, and would commute the sentences of those affected, which included Kevin Dial and Andrew Dottin. However, local media reported in June 2005 indicating that the Advisory Committee on the Power of Pardon were scheduled to consider the death row inmates' case, which was followed by a statement by the Attorney General to the House of Representatives on June 6, 2005, outlining his intention to execute all those on death row. On June 10, 2005, the Ministry of National Security informed the victims in writing of its intention to convene hearings in respect of their sentences to consider issuing warrants of execution; and it also indicated its intention to begin executions as early as June 14, 2005.

A constitutional motion was filed on June 13, 2005, for a declaration that execution would be unlawful. A conservatory order was granted by the Port of Spain High Court on June 13, 2005, imposing temporary stays on execution. The constitutional motion was granted and on August 15, 2008, the sentences of the victims were commuted to life imprisonment.

In its Report on the Merits, the Inter-American Commission recalled that, according to the longstanding jurisprudence of the IACHR and the Inter-American Court, the mandatory death penalty, that is, the imposition of the death penalty upon conviction for a crime, without an opportunity for presenting and considering mitigating circumstances in the sentencing process, contravenes the American Convention on Human Rights (the "American Convention") and the American Declaration on the Rights and Duties of Man ("the American Declaration").

Mr.  
Pablo Saavedra Alessandri  
Secretary  
Inter-American Court of Human Rights  
San José, Costa Rica

In the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, the Inter-American Court found that the Offences Against the Person Act of 1925 prevents the judge from considering the basic circumstances in establishing the degree of culpability and individualizing the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different. In the instant case, the mandatory death penalty set forth in the Offences Against the Person Act was applied to Messrs. Dial and Dottin in February 1997, while the American Convention was in force. In its Report on the Merits the Commission further noted that Trinidad and Tobago still retains the mandatory death penalty.

The Commission reaffirmed that imposing a mandatory penalty of death for all crimes of murder contravenes the prohibition of arbitrary deprivation of the right to life recognized in Article 4(1) of the Convention, as it fails to individualize the sentence in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused, according to Article 4(2) of the same instrument.

The Commission concluded that the State of Trinidad and Tobago, by denying an individualized sentencing and the opportunity to present mitigating evidence, violated the victims' rights under Articles 4.1, 4.2, 5.1, 5.2, 8.1 and 25 of the American Convention, in relation to Articles 1.1 and 2. Further, given that the imposition of the mandatory death penalty continued after the entry into force of the denunciation of the American Convention, and until August 15, 2008, when the sentences of death were commuted to life imprisonment, the State has also violated Articles I, XVIII and XXVI of the American Declaration.

The IACHR further noted that important doubts existed about the gun used in the killing. It noted in this regard that the Privy Council made further observations on discrepancies, specific to ballistics evidence, and noted that where defense counsel attempted to address the matter, it was without effect. The Commission concluded that the lack of a serious analysis of the inconsistencies in the evidence constitutes a violation of the right of Messrs. Dial and Dottin to due process, particularly, regarding the right to provide a reasoned judgment and the principle of presumption of innocence. It also concluded that the lack of an effective remedy regarding those inconsistencies violated the right to judicial protection. The Commission further found that the State failed to try the victims within a reasonable time.

The Commission also concluded that, during five or six years, Messrs. Dial and Dottin remained on death row despite the existence of jurisprudence that allowed them to have their sentences commuted, and therefore benefit from rehabilitation programs. Trinidad and Tobago thus failed to guarantee that the victims could effectively exercise their right to have their death sentence commuted. Given that these facts took place after the entry into force of the denunciation of the American Convention by Trinidad and Tobago, the Commission found that they constituted a violation to the victims' rights to due process and judicial protection under the American Declaration.

The IACHR further concluded that Messrs. Dial and Dottin's deprivation of liberty on death row for nearly 11 years, as well as the inhumane prison conditions, constituted a violation to the right to humane treatment, and not to receive cruel, infamous or unusual punishment.

Based on these considerations, the Commission found that Trinidad and Tobago is responsible for the violation of Articles 4.1, 4.2, 4.6, 5.1, 5.2, 7.5, 8.1, 8.2 and 25.1 of the American Convention, in relation to its obligations established in Articles 1.1 and 2, and Articles I (life), XI (health and wellbeing), XVIII (fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration.

The State of Trinidad and Tobago deposited the instrument of ratification of the American Convention on Human Rights and accepted the contentious jurisdiction of the Inter-American Court on May 28, 1991. Trinidad and Tobago subsequently denounced the American Convention by notice given on May 26, 1998, which entered into force on May 26, 1999, in accordance with Article 78 of the American Convention.

The Commission has appointed Commissioner Edgar Stuardo Ralón Orellana and Executive Secretary Tania Reneaum Panszi as its delegates. In addition, Marisol Blanchard Vera, Assistant Executive Secretary, Jorge Humberto Meza Flores, Analía Banfi Vique and Thalassa Cox, specialists of the Executive Secretariat of the IACHR, will act as its legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission encloses a copy of Report on the Merits No. 331/20 prepared in compliance with Article 50 of the Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I) and the annexes used in the preparation of Report on the Merits No. 331/20 (Annexes). The IACHR notified the report to the State on March 23, 2021, granting it a period of two months to report on compliance with the recommendations. To date, the State has not submitted a report on the measures adopted nor has it requested the suspension of the time period provided for in Article 51(1) of the American Convention in accordance with Article 45 of the IACHR Rules of Procedure. Therefore, the Commission decided to refer the case to the jurisdiction of the Inter-American Court in view of the need to obtain justice and reparation for the victims.

Specifically, the Commission submits to the Honorable Court the State actions and omissions that took place while the American Convention was in force in Trinidad and Tobago, that is, between May 28, 1991, and May 26, 1999. Therefore, the facts relating to the imposition of the mandatory death penalty and to due process violations that took place under the American Convention fall within the jurisdiction of the Honorable Court.

In this regard, the Commission requests the Honorable Court to conclude and declare that the State of Trinidad and Tobago is responsible for the violation of the rights to life, to personal integrity, to personal liberty, to judicial guarantees, and to judicial protection enshrined in Articles 4. 1, 4.2, 4.6, 5.1, 5.2, 7.5, 8.1, 8.2 and 25.1 of the American Convention on Human Rights, in relation to Articles 1.1 and 2, to the detriment of Kevin Dial and Andrew Dottin, in the terms described throughout the Report on the Merits.

Consequently, the Commission requests the Inter-American Court to establish the following measures of reparation:

1. Grant Kevin Dial and Andrew Dottin effective relief, including the review of their trials and sentences in accordance with the guarantees of fair trial and due process set forth in Articles XVIII and XXVI of the American Declaration, and the payment of pecuniary compensation.
2. Review its laws, procedures, and practices to ensure that persons accused of capital crimes are tried within a reasonable time after their arrest and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles specific to fair trial, due process and humane treatment during custody.
3. Ensure that prisons conditions are compatible with international human rights standards in accordance with the right of protection against cruel, infamous or unusual punishment.
4. Given the violations of the American Declaration and the American Convention, the Inter-American Commission also recommends to Trinidad and Tobago that it abolishes the death penalty, including the mandatory death penalty.<sup>1</sup>

In addition to the need to obtain justice and reparation for the lack of compliance with the recommendations of the merits report, the Commission considers that the case presents issues of inter-American public order. The Honorable Court will have the opportunity to continue to develop its jurisprudence on the duty to investigate.

In addition to the need to obtain justice and reparation for the lack of compliance with the recommendations of the Report on the Merits, the Commission considers that the case presents matters of inter-American public order. In particular, the Honorable Court will have the opportunity to continue developing its jurisprudence on the death penalty, specifically regarding the prohibition of the imposition of the mandatory death penalty.

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<sup>1</sup> See in this regard, IACHR, *The death penalty in the Inter-American Human Rights System: From restrictions to abolition*, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

Since these aspects have a significant impact on the inter-American public order, the Commission requests the transfer of the expert opinion rendered by Desmond Allum in the *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*.

The Commission brings to the attention of the Honorable Court the following information from the petitioner in the proceedings before the IACHR according to the most recent information:

Paula Hodges  
Herbert Smith Freehills  
[REDACTED]

Sincerely,

Marisol Blanchard Vera  
Assistant Executive Secretary

Annex