**FOLLOW-UP FACTSHEET OF REPORT No. 78/15**

**CASE 12.831**

**KEVIN COOPER**

**(United States)**

1. **Summary of the Case**

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| **Victim(s)**:Kevin Cooper  **Petitioner(s)**: Norman C. Hile  **State**:United States  **Merits Report No.** [78/15](http://www.oas.org/en/iachr/decisions/2015/USPU12831EN.pdf), published on October 28, 2015  **Admissibility Report No.** [131/11](http://www.oas.org/en/iachr/decisions/2011/USAD593-11EN.DOC), adopted on October 19, 2011  **Precautionary Measures**:[160/11](http://www.oas.org/en/iachr/decisions/precautionary.asp#tab2011), granted on August 3, 2011  **Themes**:Death Penalty / Right to Life / Right to Personal Liberty / Right to a Fair Trial / Judicial Protection / Domestic Effects / Racial Discrimination / Right to Equal Protection.  **Facts**:The case concerns violations of due process of law against Kevin Cooper, a 60-year-old Afro-descendant man, who has been deprived of his liberty on death row in the State of California since 1985. These violations include: that the processing of the crime scene was mishandled; that the District Attorney presented false evidence at trial; that the San Bernardino Sheriff’s Department (SBSD) failed to disclose exculpatory information to the defense, and planted and manipulated evidence; that the District Court failed to conduct meaningful post-conviction proceedings; that court-appointed trial counsel committed numerous mistakes that materially prejudiced Mr. Cooper; and that the alleged victim faced racism from the SBSD, the District Attorney and the community.  **Rights violated**:The Commission concluded that the United States is responsible for the violation of the right to equality before the law (Article II), the right to a fair trial (Article XVIII), and the right to due process of law (Article XXVI) guaranteed in the American Declaration, with respect to Kevin Cooper. Consequently, should the State carry out the execution of Mr. Cooper, it would be committing a serious and irreparable violation of the basic right to life recognized in Article I of the American Declaration. |

1. **Recommendations**

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| **Recommendations** | **State of compliance in 2020** |
| 1. To grant Kevin Cooper effective reparation, including a review of his trial and sentence, in keeping with the due process and fair trial protections enshrined in Articles I, II, XVIII and XXVI of the American Declaration. | Partial compliance |
| 2. To review its laws, procedure and practices in order to ensure persons who stand accused of capital offenses are tried and, if found guilty, sentenced in keeping with the rights enshrined in the American Declaration, including Articles I, II, XVIII and XXVI thereof. | Pending compliance |
| 3. To guarantee that legal counsel provided by the State in death penalty cases, has been trained to act in death penalty cases and is capable of carefully and diligently investigating all mitigating evidence. | Pending compliance |
| 4. In view of the violations of the American Declarations found by the IACHR in the instant case and in other cases relating to application of the death penalty, the Inter-American Commission recommends the United States to adopt a moratorium on executions of persons sentenced to the death penalty. | Partial compliance |

1. **Procedural Activity**
2. On October 2, 2018 the IACHR held a working meeting with the parties during its 169th Period of Sessions regarding the follow-up of recommendations issued in Merits Report No. 78/15. Following this meeting, the petitioner presented updated information regarding the case by way of a letter on October 5. The Commission forwarded this letter to the State and requested observations on compliance with the IACHR’s recommendations to be submitted within a period of one month. Additionally, on October 12, 2018, the President of the IACHR, Commissioner Margarette May Macaulay, sent a letter to the Governor of California, by way of the U.S. Department of State, calling on him to take all of the measures available to him to comply with the recommendations of the IACHR. On October 15, 2018, the State confirmed that it had forwarded President Macaulay’s letter to Governor Brown, however, as of the closing date of this report, the State had not provided a response to the Commission’s October 5 letter.
3. In 2020, the IACHR requested updated information on compliance from the State on August 19, and the State presented said information on September 16.
4. The IACHR requested updated information on compliance from the petitioner on August 19, 2020. As of the closing of this report, the petitioners had not presented said information.
5. **Analysis of the information presented**
6. The Commission considers that the information submitted by the State in 2020 is irrelevant to update on the follow-up of the case given that it is repetitive of the information presented in previous years, without presenting new information on measures taken recently to comply with at least one of the recommendationsissued in Merits Report No. 78/15.
7. In this sense, because of the lack of updated information on the level of compliance with the recommendations, the IACHR reiterates the analysis of compliance and the conclusions made in its 2019 Annual Report.
8. **Analysis of compliance with the recommendations**
9. **With regards to the first recommendation**, in 2018 the State informed that Mr. Cooper’s clemency request was being considered by the Governor of California. The State further indicated that the District Attorney of San Bernardino County had submitted its response to said request urging the Governor to deny clemency to Mr. Cooper.
10. Through a note dated September 11, 2019, the State reported that the Governor of California—the state where Mr. Cooper was incarcerated—had issued an executive order on March 13, 2019 imposing a moratorium on the death penalty in California, thereby granting a blanket reprieve to all of California’s death row inmates. In this connection, the State noted that the IACHR had welcomed that moratorium in its March 20, 2019, press release. The State also reported that the request for clemency filed by Mr. Cooper had been granted by the Governor of California, thereby according the remedy called for by the IACHR. The State asserted that the recommendations made by the Commission in the Merits Report had thus been materially implemented and requested the case be closed. In 2020, the State reiterated its earlier responses, without presenting new information on actions adopted to comply with this recommendation.
11. In 2016, the petitioner informed that a petition for clemency was filed on behalf of Mr. Cooper on February 17, 2016 with the former Governor of California, Edmund G. Brown Jr., which asked Governor Brown to grant the relief recommended in Merits Report No. 78/15, including undertaking an innocence investigation before Mr. Cooper is executed and requesting that Governor Brown permit further forensic testing on 12 items of evidence. In 2018, the petitioner informed that on July 3, 2018, the Office of Governor Brown sent him a letter requesting additional information in order for the Office to complete its evaluation of the petitioner’s requests for additional forensic testing. In 2019, the State reported that the petition for clemency had been granted.
12. The Commission values the information submitted by the parties in 2018. Further, the Commission is aware that, according to publicly available information, on December 24, 2018, former Governor Brown ordered new DNA tests on 4 pieces of evidence in Mr. Cooper’s case.[[1]](#footnote-1) In a press release dated April 29, 2019, the IACHR highlighted as progress in this case, the order to carry out further DNA testing on four pieces of evidence in relation to Kevin Cooper’s clemency request. Prior to that, in a March 20, 2019 press release, the IACHR had welcomed the executive order imposing a moratorium on executions in the U.S. state of California, but noted that the executive order had not changed any existing sentences or brought about the release of death row inmates.
13. The IACHR considers that both the moratorium on the death penalty in California and the clemency granted to Kevin Cooper by the Governor of California constitute important progress toward compliance with Recommendation 1. However, the Commission has received no information about Mr. Cooper’s release, or any review or reversal of his trial or conviction, or how the clemency granted him would affect his status as a convicted criminal, with all of the legal consequences that entails. The IACHR calls on the State and the petitioners to provide it with up-to-date and complete information in this regard. Based on the foregoing, Recommendation 1 has been partially complied.
14. **Regarding the second and third recommendations**, the State has not submitted any information about measures adopted to comply with these recommendations.
15. In 2018, the petitioner reported that since the publication of the merits report, the State has not taken actions to comply with the recommendations issued by the Commission.
16. The Commission urges the State to adopt actions to review its laws, procedures and practices in order to ensure persons who stand accused of capital offenses are tried and, if found guilty, sentenced in keeping with the rights enshrined in the American Declaration, and to guarantee that legal counsel provided by the State in death penalty cases has been trained to act in death penalty cases and is capable of carefully and diligently investigating all mitigating evidence, and to inform the Commission of these actions. Based on this, the Commission finds that Recommendations 2 and 3 are pending compliance.
17. **Regarding the fourth recommendation**, in 2019, the State reported that the Governor of California—the state where Mr. Cooper was incarcerated—had issued an executive order on March 13, 2019 imposing a moratorium on the death penalty in California, thereby granting a blanket reprieve to all of California’s death row inmates. In 2020, the State reiterated its earlier responses, without presenting new information on actions adopted to comply with this recommendation.
18. In 2018, the petitioner reported that since the publication of the merits report, the State has not taken actions to comply with the recommendations issued by the Commission. The petitioner further informed the Commission that in November 2017, voters in California voted in favor of resuming executions in the state, which have been halted since 2006, and as a result, the state of California enacted regulations to permit it to resume executions. The petitioner reported that, at that time, there were 746 prisoners on California’s death row, including Mr. Cooper. No updated information was received from the petitioners in 2019 on this point.
19. The IACHR values the information in regard to the moratory of the deah penaly in the State of California as a first important stop to comply with this recommendation. Likewise, it notes that the State has not reported on the suspension of executions of death row inmates in states other than California. In light of this, the Commission concludes that Recommendation 4 has been partially complied.
20. **Level of compliance of the case**
21. Based on the foregoing, the Commission concludes that the level of compliance of the case is partial. Consequently, the Commission will continue to monitor Recommendations 1, 2, 3 and 4.
22. The Commission urges the State to adopt actions to implement the recommendations issued in Merits Report No. 78/15 and to inform the Commission of these actions. The Commission reminds the State that, should it carry out the execution of Mr. Cooper, it would be committing a serious and irreparable violation of the basic right to life recognized in Article I of the American Declaration.[[2]](#footnote-2)
23. **Individual and structural results of the case**
24. This section highlights the individual and structural results of the case which have been informed by the parties.
25. **Individual results of the case**

*Restoration of the infringed right measures*

* On December 24, 2018, former Governor of California Edmund G. Brown Jr. ordered new DNA testing on 4 pieces of evidence in Mr. Cooper’s case.
* The Governor of California granted the request for clemency in 2019.

1. **Structural results of the case**

* On March 13, 2019, the Governor of California issued an executive order imposing a moratorium on the execution of death row inmates in that state.

1. NBC News, [“California Gov. Brown orders new DNA testing in murder case involving Kevin Cooper”](https://www.nbcnews.com/news/us-news/california-gov-brown-orders-new-dna-testing-murder-case-involving-n951746), December 24, 2018. [↑](#footnote-ref-1)
2. IACHR, [Case 12.831, Merits Report No. 78/15, Kevin Cooper (United States)](http://www.oas.org/en/iachr/decisions/2015/USPU12831EN.pdf), para. 156. [↑](#footnote-ref-2)