
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 34/2018**

Precautionary Measures No. 1046-17
Clyde Anderson Grazzette regarding Barbados
May 5th, 2018

I. INTRODUCTION

1. On November 13, 2017, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a handwritten request for precautionary measures presented by Clyde Anderson Grazzette (hereinafter “the applicant” or “the proposed beneficiary¹”), urging the IACHR to request that the State of Barbados (hereinafter “the State” or “Barbados”) adopt precautionary measures to protect his right to life and personal integrity. According to the request, the proposed beneficiary is in the prison “Her Majesty’s Prisons, Dodds, St. Philip” having been convicted and sentenced to the obligatory imposition of the death penalty by hanging, and is currently on death row. The request is related to petition 2456-17 alleging violations of the American Convention on Human Rights and other international treaties.

2. The Commission requested information from the State on March 8, 2018. The State, to date, has not responded.

3. After analyzing the legal and factual allegations presented, as well as their specific context, the Commission considers that Mr. Grazzette is *prima facie* in a serious and urgent situation, since his rights to life and personal integrity are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the State of Barbados: a) Refrain from executing the death penalty imposed on Mr. Grazzette until the Commission has ruled on his petition; b) Adopt the necessary measures to preserve the life and personal integrity of Mr. Grazzette, especially due to the impact that death row may have on his personal integrity, which may include transferring the proposed beneficiary to another detention center that meets the corresponding international standards; and c) Agree upon the measures to be adopted with the beneficiary and his representatives.

II. SUMMARY OF THE FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

1. Information provided by the applicant

4. The proposed beneficiary indicates that he was arrested for homicide, on May 13, 2002. On November 21, 2006, he was declared guilty and sentenced to death by “hanging.” The proposed beneficiary appealed that decision, which was confirmed in September of 2008. A new appeal was filed before the Caribbean Court of Justice, which was heard and dismissed on February 8, 2009, “but granted [him] permission to appeal the mandatory death sentence.”

5. In this regard, the petitioner indicated that a hearing was scheduled for March 31, 2009, but the “then Director of Public Accusations for the Island of Barbados” agreed to postpone the matter of sentencing until a law was passed to abolish the death penalty in Barbados.

6. The proposed beneficiary indicated that he has been on death row for 11 years and awaiting the aforementioned law for 8 years. He added that he had written letters to different authorities, without

¹The request arrived by postal mail sent by the “Barbados Prison Service” of “Her Majesty’s Prisons, Dodds” to which the communication of the proposed beneficiary was attached. The date on the communication sent by the prison is October 11, 2017.

receiving answers from anyone. The proposed beneficiary indicated that the long wait on death row has affected him psychologically, emotionally and physically.

2. Response from the State

7. The Commission requested information from the State on March 8, 2018. A response has not been received to date.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

8. The precautionary measures mechanism is part of the IACHR's function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of the American States. These general oversight functions are established in Article 41 (b) of the American Convention on Human Rights, as well as Article 18 (b) of the Statute of the Inter-American Human Rights and Article 25 of the Rules of Procedure of the Commission related to the precautionary measures mechanism. According to the latter Article, the IACHR grants precautionary measures in urgent and serious situations, and when these measures are necessary to avoid irreparable harm to persons.

9. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter "the Inter-American Court" or "IAHR Court") have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective aspect, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary aspect, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary aspect aims to safeguard the rights at risk until the petition in the inter-American system is resolved. The object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits, and, thus, avoid any further 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 or provisional measures make it possible for the State concerned to comply with the final decision and, if pertinent, implement any ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, 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.

10. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.²

11. As a preliminary observation, the Commission considers it pertinent to clarify that it is not responsible for ruling on the criminal responsibility of the proposed beneficiary, nor through the

² In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACourtHR, Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

mechanism of precautionary measures may it rule on the conventionality of the criminal process in which the proposed beneficiary was sentenced. In the present proceedings, the Commission will only analyze compliance with the requirements of Article 25 of the Rules of Procedure of the IACHR which can be evaluated without having to go into the merits of the matter.

12. In the present case, the Commission identifies that Mr. Grazzette was sentenced to the mandatory penalty of death by hanging in 2006 and is currently held at "Her Majesty's Prisons, Dodds, St. Philip," and has been on death row for approximately the last 11 years.

13. Regarding the requirement of seriousness, the Commission considers that it has been met, both in its precautionary and protective aspect.

14. In this regard, the Commission first notes that the proposed beneficiary filed a petition (P-2456-17) alleging violations of the American Convention, among other claims, in view of the "mandatory" imposition of death penalty.

15. With regard to this aspect, the Commission recalls that, in the matters of *Boyce, 2007* and *DaCosta Cadogan, 2009*, both regarding Barbados, first the IACHR and then the Inter-American Court determined the non-compliance of the application of the mandatory "death penalty" under domestic legislation for the crime of homicide as established in Section 2 of the LDCP.³ Accordingly, in such cases, the Inter-American Court ordered that Article 26 of the Barbados Constitution of 1966 regarding the immunity of the "existing laws,"⁴ which prevented the questioning of previous legislation like the LDCP of 1868,⁵ be eliminated or modified. The Commission observes that during the supervision of these cases, in 2011 the State reported to the Inter-American Court on the creation of a "Committee" to study the necessary legislative changes⁶ —and according to public information, the last time a death sentence was implemented in Barbados was in 1984⁷— the Commission does not have information indicating that the death penalty has indeed been repealed.

16. Secondly, the Commission notes that the applicant indicated he has been on death row for approximately 11 years, and that "the long wait" has affected him psychologically, emotionally, and physically. In relation to this aspect, the Commission notes that the "death row phenomenon" has been widely known for the impacts it generates on the rights to life and integrity of persons deprived of

³Specifically in the *DaCosta Cadogan* case, recalling the precedent of the *Boyce* case, the Inter-American Court indicated that "with respect to Section 2 of the LDCP, which indicates that 'any person convicted of the crime of homicide will be sentenced, and will suffer, the death penalty,'" the Court stated in *Boyce* and others that this law prevents the exercise of the right not to be arbitrarily deprived of life and as such is per se contrary to the Convention, therefore the State has the duty to eliminate or modify it in accordance with Article 2 of that instrument. I/A Court H.R. Case of *DaCosta Cadogan v. Barbados*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of September 24, 2009. Series C No. 204, para. 70; and I/A Court H.R. Case *Boyce et al. v. Barbados*. Supervision Compliance Judgment. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 10. Available at: http://www.corteidh.or.cr/docs/supervisiones/boyce_21_11_11.pdf (In Spanish).

⁴I/A Court H.R. Case *Boyce et al. v. Barbados*. Preliminary Objection, Fund, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, operative paragraph 8; and IHR Court. Case of *DaCosta Cadogan v. Barbados*, Op. Cit., Ninth operative paragraph.

⁵As indicated by the I/A Court HR, "[i]n effect, Article 26 does not allow the challenge of those laws in force, prior to the constitution, with the purpose of reviewing [their] constitutionality even when the purpose of said review is to analyze if the law violates rights and fundamental freedoms. This is the case of Article 2 of the LDCP, which came into force at the time of the enactment of the Offenses against the Person Act of 1868. That is, Article 2 of the LDCP is a law prior to the current constitution, and continues as law in Barbados. Therefore, under the "exclusion clause," the constitutionality of Article 2 of the LDCP cannot be challenged internally." I/A Court H.R. Case *Boyce et al. v. Barbados*, Op. Cit., Para. 75

⁶I/A Court HR. Case of *DaCosta Cadogan v. Barbados*. Supervision Compliance Judgment. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 10 and 13.

⁷Amnesty International, "Caribbean: Death penalty in the English-speaking Caribbean: A Human Rights issue," November 30, 2012, available at <https://www.amnesty.org/en/documents/amr05/001/2012/en/>; Cornell, Center on the Death Penalty Worldwide, "Death penalty database: Barbados," latest updates as of December 20, 2017, available at: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Barbados#a1-2>

liberty. In this regard, the European Court determined in *Soering vs. United Kingdom* that this phenomenon is characterized by a prolonged period of detention prior to execution, during which mental distress is suffered, in addition to other circumstances to which the accused is exposed.⁸ In addition, the Commission recently published Merits report No. 24/17, on the situation of an Argentine citizen who was sentenced to death in the United States and has been held on death row for more than twenty years. It considered that, in the specific circumstances of the case, this constituted a form of torture, inhuman treatment and a cruel, infamous and unusual punishment.⁹

17. The Commission notes that, despite the fact that a request for information was made on March 8, 2018, as of the date of this resolution, no communication has been received from the State of Barbados. The Commission regrets the lack of response from the State, which makes it impossible to know its position on the present request, as well as the actions that, if relevant, it may be implementing in order to address the described situation of risk.

18. In view of the aforementioned, taking into account the impact that death row would have on the rights of the proposed beneficiary, as well as the effect that execution would have on the rights to life and personal integrity, thus making an eventual pronouncement of the Commission on the merits of the petition ineffective, the Commission concludes that Mr. Grazette's rights are *prima facie* in a situation of grave risk.

19. Regarding the requirement of urgency, the Commission considers that it has been met. In this regard, the Commission observes that an eventual decision on the appeal of the mandatory death sentence by the Caribbean Court of Justice has been postponed for approximately eight years, pending the adoption of a law to abolish the mandatory death penalty in Barbados. To date, this has not happened. The Commission understands that the delay in legislative amendments to repeal the mandatory death penalty in Barbados, also ordered by the Inter-American Court in the cases *Boyce*, 2007 and *DaCosta Cadogan*, 2009, has the effect of indefinitely prolonging the presence of the proposed beneficiary on death row, in such a way that in view of the impact it would have on his rights (see supra paragraph 16), requires the adoption of immediate measures.

20. On the other hand, understanding that the Caribbean Court of Justice serves as the "highest court of appeals," having replaced the Judicial Committee of the Privy Council in 2005, the Commission considers that in the event of a result unfavorable to the proposed beneficiary, there would be no other instance before which the decision could be internally appealed, which would make the execution of the death penalty imminent. The Commission notes as a precedent that, some time ago the Judicial Committee of the Privy Council "stated that if it were not for the exclusion clause [established in the Constitution of Barbados], it would have declared that the mandatory death penalty goes against the constitutional right not to be subjected to a cruel, inhuman and degrading punishment."¹⁰

21. Regarding the requirement of irreparable harm, the Commission considers that it is complied

⁸ IACHR. *The Death Penalty in the Inter-American Human Rights System: Abolition, Restrictions*. OEA / Ser.L / V / II. Doc. 68. December 31, 2011, page 200. Available at: <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

⁹ IACHR, Report No. 24/17, Case 12.254. Background. Victor Saldaño. U.S. March 18, 2017, para. 252. Available in: <http://www.oas.org/en/iachr/decisions/merits.asp>

¹⁰ In addition, according to the Inter-American Court: "This supposed limitation of the right to judicial protection was addressed in 2004 by the highest court of appeal in Barbados at the time, the Judicial Committee of the Privy Council (hereinafter, "JCPC") which held in *Boyce and Joseph v. The Queen* that the domestic courts could not declare that Article 2 of the LDCP is inconsistent with Article 15.1 of the Constitution of Barbados, which prohibits inhuman or degrading treatment, given that the LDCP is an "existing law" according to the meaning of article 26 of the Constitution." See: IACHR Court, *Boyce et al. V. Barbados*, op. Cit., Para. 76. In the instant case, the Inter-American Court also indicated that "it coincides with the reasoning of the Judicial Committee of the Privy Council that a fundamental right is at stake, namely, the right not to be arbitrarily deprived of life." See: *Case Boyce et al. V. Barbados*, op. Cit., Footnote 73.

with, to the extent that the possible effects on the rights to life and personal integrity constitute the maximum situation of irreparability. The Commission takes into account that if the proposed beneficiary is executed before it has had the opportunity to evaluate the petition in its entirety, the final decision would be ineffective, since the situation of irreparable harm would have materialized.

IV. BENEFICIARY

22. The Inter-American Commission declares as beneficiary Clyde Anderson Grazette, who is duly identified in the present proceedings.

V. DECISION

23. In view of the aforementioned background information, the IACHR considers that the present matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm established in Article 25 of the Rules of Procedure. Consequently, the Commission requests that the State of Barbados:

- a) Refrain from executing the death penalty imposed on Mr. Grazette until the Commission has ruled on his petition;
- b) Adopt the necessary measures to preserve the life and personal integrity of Mr. Grazette, especially considering the impact that death row would have on his personal integrity, which may include transferring the proposed beneficiary to another detention center that meets the corresponding international standards; and
- c) Agree upon the measures to be adopted with the beneficiary and his representatives.

24. The Commission also requests that the Government of Barbados inform the Commission within a period of 20 days, as from the date of notification of the present resolution, regarding the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

25. The Commission highlights that, in conformity with Article 25(8) of the IACHR's Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment regarding the possible violation of rights protected in the American Convention and other applicable instruments.

26. The Commission requests that the Secretariat of the Inter-American Commission notify the State of Barbados and the applicants of the present Resolution.

27. Approved on May 5th, 2018 by: Margarett May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Luis Ernesto Vargas, Second Vice-President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola and Flávia Piovesan, members of the IACHR.

Paulo Abrão
Executive Secretary