

**Order of the President
of the Inter-American Court of Human Rights**

of May 18, 2009

Case of DaCosta Cadogan v. Barbados

Having Seen:

1. The application submitted by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court," or "the Tribunal") on October 31, 2008, in which it offered the testimony of one "witness".
2. The brief containing pleadings, motions, and evidence (hereinafter "the representatives' brief") submitted by the representatives of the alleged victim (hereinafter "the representatives") on January 16, 2009, by which they offered the testimony of one "witness" and the reports of three expert witnesses.
3. The communication of January 22, 2009, by which the Secretariat of the Court (hereinafter "the Secretariat") informed the representatives that "the Court w[ould] timely assess the necessity of requesting the affidavits and reports that were not submitted at th[at] procedural juncture."
4. The brief containing preliminary objections, the answer to the application, and observations to the representatives' brief, received on March 17, 2009, in which the Illustrious State of Barbados (hereinafter "the State" or "Barbados") proposed two expert witnesses.
5. The communication of March 27, 2009, by which the Secretariat, pursuant to instructions of this Presidency, asked the State to submit to the Court the *curricula vitae* of its proposed expert witnesses, Anthony V. Grant and Dr. Brian MacLachlan, and requested that the Commission and the representatives submit written briefs on the preliminary objections presented by the State (*supra* Having Seen para. 4).
6. The communications of April 20, 2009, in which the Secretariat, following the instructions of this Presidency, requested the Inter-American Commission, the representatives of the alleged victim and the State to submit, no later than April 29, 2009, their definitive lists of witnesses and expert witnesses. Additionally, for reasons of procedural economy, the parties were requested to indicate the witnesses and expert witnesses that could submit their declarations through sworn statements (affidavits),

pursuant to article 50(3) of the Court's Rules of Procedure (hereinafter "the Rules of Procedure").¹

7. The communication of April 24, 2009, by which the Inter-American Commission submitted its definitive proposal of witnesses, offering the declaration of one "witness" by affidavit (*supra* Having Seen para. 6).

8. The communication of April 27, 2009, by which the representatives presented their definitive proposal of witnesses and expert witnesses (*supra* Having Seen para. 6). The representatives offered the sworn written statements (affidavits) of one "witness" and two expert witnesses, and offered the declaration of one expert witness at the public hearing before the Court.

9. The communications of April 29, 2009, by which the Inter-American Commission and the representatives submitted their briefs on the State's preliminary objections, respectively (*supra* Having Seen paras. 4 and 5).

10. The communication of April 29, 2009, by which the State of Barbados submitted the *curricula vitae* of its proposed expert witnesses, Mr. Anthony V. Grant and Dr. Brian MacLachlan (*supra* Having Seen para. 5).

11. The communication of April 29, 2009, by which the State of Barbados submitted its definitive proposal of expert witnesses. The State offered the sworn written statements (affidavits) of its two previously offered expert witnesses; alternatively, it also offered the oral declaration of one of these experts. In addition, the State offered the expert testimony of Mr. Anthony Blackman in "a sworn statement (affidavit) or oral evidence, or both". Accordingly, the State submitted, along with its proposal, Mr. Anthony Blackman's *curriculum vitae*.

12. The communication of April 30, 2009, by which the Secretariat, following the instructions of this Presidency, informed the parties that they had until May 8, 2009, to submit observations on the definitive proposals of witnesses and expert witnesses presented (*supra* Having Seen paras. 7, 8, and 11).

13. The communication of May 6, 2009, whereby the Commission stated that it had "no observations" in relation to the final proposals of witnesses and expert witnesses submitted by the representatives and the State.

14. The communications of May 8, 2009, whereby the representatives and the State indicated that they had no observations in relation to the final lists of witnesses and expert witnesses submitted in the present case.

Considering:

1. That the admission and procedure for taking evidence is governed by articles 46, 47, 50, and 52 of the Rules of Procedure.

¹ Approved by the Court during its XLIX Ordinary Period of Sessions, held from November 16 to 25, 2000, and partially amended by the Court during its LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009. Available at <http://www.corteidh.or.cr/reglamento.cfm>.

2. That the Inter-American Commission, the representatives, and the State proposed the declaration of the alleged victim and expert evidence during the appropriate stage of the proceedings (*supra* Having Seen paras. 1, 2, 4, 7, 8, and 11).

3. That the Inter-American Commission, the representatives, and the State were given the right of defense with regard to the evidentiary proposals made by each of the parties at different procedural junctures (*supra* Having Seen paras. 6 and 12 to 14).

4. That the Inter-American Commission, the representatives, and the State made no observations or objections to the proposals submitted (*supra* Having Seen paras. 12 to 14).

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5. That this Presidency observes that the Commission and the representatives offered the “witness testimony” of Mr. Tyrone DaCosta Cadogan, who is the alleged victim in the present case. Pursuant to Article 50 of the Rules of Procedure applicable in the present case, this Presidency will consider his declaration not as witness testimony, but as a declaration by an alleged victim, to be assessed within the context of the case, taking into account the special characteristics of such declarations.

6. That this Presidency considers it fitting to receive the following declarations of the alleged victim and the expert witnesses that were proposed by the parties at the proper stage of the proceedings and have not been objected to, so that the Tribunal can assess their evidentiary value within the context of the body of evidence in the case and according to the rules of sound judgment: Mr. Tyrone DaCosta Cadogan, whose declaration as an alleged victim was proposed by the Commission and the representatives; Dr. Timothy Green, Professor Nigel Eastman, and Edward Fitzgerald QC, proposed by the representatives as expert witnesses; and Mr. Anthony V. Grant and Dr. Brian MacLachlan, proposed by the State as expert witnesses. This Presidency will determine the object of the aforementioned declaration of the alleged victim and the expert witnesses’ declarations, as well as the manner in which said evidence shall be received by the Court (*infra* Considering Paragraphs 9 to 11 and Operative Paragraph 1).

7. That the State offered the expert testimony of Mr. Anthony Blackman extemporaneously, since that testimony was not offered in its brief containing preliminary objections, the answer to the application, and observations to the representatives’ brief (*supra* Having Seen paras. 4 and 11). Nevertheless, because the parties did not object to this evidence (*supra* Having Seen paras. 12 to 14 and Considering Paragraph 4), and because this Presidency deems Mr. Blackman’s expert testimony on “the law and procedure related to the defence of diminished responsibility” to be useful and relevant to the resolution of the issues in the present case² regarding the imposition of the death penalty, this Presidency considers it fitting to receive his declaration, pursuant to Article 47(1) of the Rules of Procedure, so that that the Tribunal can assess its evidentiary value within the context of the body of evidence in the case and according to the rules of sound judgment. This Presidency will determine the object of Mr. Blackman’s expert testimony, as well as the manner in which said evidence shall be received by the Court (*infra* Considering Paragraph 12 and Operative Paragraph 1).

² Cf. *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 81; *Case of Kwas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 41, and *Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 58.

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8. That it is essential that the Court ensure, for the resolution of the issues at stake, the determination of the truth and the most complete presentation of facts and arguments by the parties, guaranteeing both the right of defense of the parties and the possibility of adequately addressing all of the cases before the Tribunal. Consequently, it is necessary to receive the greatest possible number of declarations of alleged victims, testimonies and expert reports through sworn written statements (affidavits), and to summon to public hearings only those alleged victims, witnesses and expert witnesses whose oral declaration is truly indispensable, taking into account the circumstances of the case and the object of the declarations, testimonies and expert reports in question.

9. That on the basis of the foregoing considerations and Article 50(3) of the Rules of Procedure, this Presidency deems it fitting to receive by affidavit the declaration of Mr. Tyrone DaCosta Cadogan, proposed by the Commission and the representatives; the expert reports of Prof. Nigel Eastman and Edward Fitzgerald QC, proposed by the representatives, and the expert report of Mr. Anthony V. Grant, proposed by the State (*supra* Considering para. 6). This Presidency observes that the parties had offered all of the above-mentioned declarations through sworn written statements (affidavits). The object of their declarations will be determined in the operative paragraphs of the present Order (*infra* Operative Paragraph 1).

10. That the State offered the expert testimony of Dr. Brian MacLachlan and of Mr. Anthony Blackman to be rendered before the Court during the public hearing in the present case or through a sworn written statement (affidavit), or both. However, taking into account the proposed object of their expert reports³, as well as the circumstances of this case, and for reasons of judicial expediency, this Presidency does not deem it indispensable to receive Dr. Brian MacLachlan's or Mr. Anthony Blackman's expert reports orally during the public hearing, but rather through sworn written statements (affidavit). This Presidency shall determine the object of their expert reports in the Operative Paragraphs of the present Order (*infra* Operative Paragraph 1).

11. That the representatives offered the expert testimony of Dr. Timothy Green to be rendered before the Court during the public hearing in the present case. However, taking into account the proposed object of his expert report⁴, as well as the circumstances of this case, and for reasons of judicial expediency, this Presidency does not deem it indispensable to receive Dr. Timothy Green's expert report orally during the public hearing, but rather through a sworn written statement (affidavit). This Presidency shall determine the object of his expert report in the Operative Paragraphs of the present Order (*infra* Operative Paragraph 1).

12. That in conformity with the right of defense and the adversarial principle, as well as Article 50(3) of the Rules of Procedure, the declaration of the alleged victim and the expert reports received through sworn statements (affidavits) shall be transmitted to the other

³ The State defined the object of Dr. Brian MacLachlan's expert report as "the processes and facilities related to the Psychiatric Hospital and psychiatric assessment in criminal cases, [and] the ethical and professional obligations of psychiatrists." The State defined the object of Mr. Anthony Blackman's expert report as "the law and procedure related to the defence of diminished responsibility."

⁴ The representatives defined the object of Dr. Timothy Green's expert report as "the psychological examination he carried out on the alleged victim and his subsequent psychology report concerning the alleged victim's mental state with regard to defenses at trial and the imposition of the death sentence."

parties so they may submit the observations they deem pertinent (*infra* Operative Paragraph 3). The probative value of this evidence shall be determined at the opportune time, taking into account the observations of the parties, if any.

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13. That this Presidency deems it pertinent to convene the Inter-American Commission, the representatives, and the State to a public hearing in order to hear their final oral arguments on the preliminary objections, as well as on possible merits, reparations, costs, and expenses in the present case.

14. That in accordance with the Court's practice, the Inter-American Commission, the representatives, and the State may submit their final written arguments on the preliminary objections, as well as on the possible merits, reparations, costs, and expenses in this case, after the conclusion of the public hearing convened by the present Order.

Now, therefore:

The President of the Inter-American Court of Human Rights,

in accordance with Articles 24(1) and 25(2) of the Court's Statute and Articles 4, 15(1), 25, 30(2), 42, 44, 45(3), 46, 47(1), 48, 50, 54, and 55 of its Rules of Procedure, and having consulted the other Judges of the Tribunal,

Decides:

1. To require, for the reasons stated in the present Order (*supra* Considering paras. 8 to 11), in accordance with the principle of procedural economy, and pursuant to Article 50(3) of the Rules of Procedure, that the following persons, proposed by the Commission, the representatives, and the State, render their declarations by affidavit:

A) *Alleged Victim*

Proposed by the Commission and the representatives of the alleged victim

- 1) *Tyrone DaCosta Cadogan*, alleged victim, who will testify on the process that led to the imposition of the mandatory death penalty in his case, and the consequences thereof.

B) Expert Witnesses

Proposed by the representatives of the alleged victim

- 2) *Nigel Eastman*, Professor of Law and Ethics in Psychiatry and Head of Forensic Psychiatry of St. George's University of London, whose expert opinion shall refer to the relevance of the alleged victim's mental state to his conviction and sentence, and on the relevance of mental health in death penalty cases from a medical perspective.
- 3) *Edward Fitzgerald QC*, Barrister who specializes in criminal law, public law, and international human rights law, and has significant experience in death penalty appeals. His expert opinion will refer to the relevance, from a legal perspective, of mental state to both conviction and sentencing in death penalty cases.
- 4) *Dr. Timothy Green*, Clinical Psychologist, whose expert report shall refer to his psychological examination of the alleged victim and his subsequent psychological report concerning the alleged victim's mental state in relation to defenses at trial and the imposition of the death penalty.

Proposed by the State

- 5) *Anthony V. Grant*, Director of Community Legal Services and an expert on the Barbadian community legal services system, whose expert opinion will refer to the requirements for legal aid in death penalty cases.
- 6) *Anthony Blackman*, Principal Crown Counsel of the Department of Public Prosecution, whose expert opinion will refer to the law and procedure related to the defense of diminished responsibility in death penalty cases.
- 7) *Dr. Brian MacLachlan*, Consultant Psychiatrist at the Barbados Psychiatric Hospital who has provided expert psychiatric evidence in the law courts of Barbados. His expert testimony will refer to psychiatric assessments in death penalty cases.

2. To require the Commission, the representatives, and the State to take all of the necessary measures so that the alleged victim and expert witnesses listed in the preceding Operative Paragraph may render their declaration and expert opinions, respectively, through sworn written statements (affidavits), and submit them before the Inter-American Court by June 10, 2009.

3. To request the Court's Secretariat to transmit to the parties the affidavits submitted, so that they may present the observations they deem pertinent within seven days of their reception. This deadline may not be extended.
4. To convene the Inter-American Commission, the representatives, and the State to a public hearing that will take place at the seat of the Inter-American Court of Human Rights on July 1, 2009, starting at 3:30 p.m., in order to receive their oral arguments on the preliminary objections and on the possible merits, reparations, costs, and expenses in the present case.
5. To require the Inter-American Commission, the representatives, and the State to serve notice of the present Order on the alleged victim and the expert witnesses each party has proposed.
6. To inform the Inter-American Commission, the representatives, and the State that they must cover the costs incurred in the production of the evidence each has offered, in accordance with Article 48 of the Court's Rules of Procedure.
7. To require the Inter-American Commission, the representatives, and the State to inform the alleged victim and the expert witnesses whose declarations have been requested in this Order that, in accordance with Article 55 of the Rules of Procedure, when a person summoned to appear or declare before the Court fails to appear or refuses to give evidence without good reason, or when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, the Court shall inform the State with jurisdiction over that person so that the appropriate action may be taken under the relevant domestic legislation.
8. To require the Secretariat of the Court, in accordance with Article 45(3) of the Rules of Procedure, to send to the Inter-American Commission, the representatives, and the State a copy of the audio recording of the public hearing in the present case after its conclusion.
9. To inform the Inter-American Commission, the representatives, and the State that they must submit their final written arguments on the preliminary objections, as well as on the possible merits, reparations, costs, and expenses in the present case no later than August 3, 2009. This deadline may not be extended and is independent of the issuing of the public hearing's audio recording.
10. To require the Secretariat of the Court to serve notice of the present Order on the Inter-American Commission, the representatives of the alleged victim, and the State.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Registrar

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Registrar