

REPORT N° 7/08
ADMISSIBILITY
PETITION 1460-06
TYRONE DACOSTA CADOGAN
BARBADOS
March 4, 2008

I. SUMMARY

1. On December 29, 2006, the Inter-American Commission on Human Rights (hereinafter "Commission") received a petition filed on behalf of Tyrone DaCosta Cadogan, a prisoner on death row in Her Majesty's Prison in Barbados. The petition alleges a violation of his right to fair trial under Article 8 of the American Convention on Human Rights (the "American Convention").

2. The Petitioner, Tariq Khan, of the Inn Chambers law firm, claims that Mr. Cadogan was convicted of murder and sentenced to death by hanging by the Supreme Court of Barbados on May 18, 2005 pursuant to section 2 of the State's Offences Against the Person Act of 1994, which stipulates the mandatory application of the death penalty for the crime of murder. Mr. Cadogan applied to the Court of Appeal of Barbados to challenge the murder conviction, which affirmed the lower court's decision on May 31, 2006. Subsequently on July 24, 2006, Mr. Cadogan applied for special leave to appeal, which was later joined by an application for special leave to appeal as a poor person to the Caribbean Court of Justice, both of which were dismissed on December 4, 2006.

3. The Petitioner alleges that Mr. Cadogan's right to a fair trial was not respected for the following reasons: (1) the diminished responsibility defense was not adequately raised by the appointed judge before the jury in his trial; (2) he was not provided with independent psychiatric expertise; and (3) the legal help provided to him by the State was insufficient, and (4) his attorney was ineffective. The petitioner also believes that the importance of these protections for the presumed victim should have been measured according to the gravity of the penalty.

4. To this date, the Commission has not received a response from the State.

5. After analyzing the facts presented here, the Commission declares the petition admissible with respect to the alleged violation of Article 8. Given its jurisprudence on the application of the mandatory death penalty and in keeping with the principle of *iura curia novit*, the Commission will examine the possible application of Articles 4(1), 4(2), 5(1), 5(2) in relation with Articles 1(1) and 2 of the American Convention in the merits stage. As such, it decides to transmit this report to the parties, to continue with the analysis of the merits of the case, and to publish this report and include it in its Annual Report to the General Assembly of the Organization of the American States.

II. PROCESSING BY THE COMMISSION

6. On January 3, 2007, the Commission acknowledged receipt of the petition and assigned it petition number 1460-06.

7. In a note of January 23, 2007, the Commission transmitted the pertinent parts of the petition to the Government of Barbados in conformity with Article 30(3) of its Regulations, requesting a response within two months. In the same communication, the Commission addressed the State, pursuant to Article 29 of its Regulations, requesting the adoption of precautionary measures to stay the execution of Mr. Cadogan until such time as it could fully investigate the petition. On the same date, the petitioners were informed of the request made to the State.

8. On January 14, 2008 the Commission reiterated a request for information to the State, requesting a response in one month, regarding its observations on the pertinent parts of the petition and information in connection with the precautionary measures in Mr. Cadogan's favor.

9. On January 18, 2008 the Commission requested additional information from the petitioner.

10. On February 22, 2008, the Commission received additional information from the petitioner and transmitted this information to the State for its observations.

11. To date, there has been no response from the State regarding the request for observations on the pertinent petition.

III. POSITIONS OF THE PARTIES

A. Petitioner

12. The Petitioner alleges that, on May 18, 2005, Mr. Cadogan was convicted of murder and sentenced to death by hanging by the Supreme Court of Barbados, pursuant to section 2 of the State's Offences Against the Person Act of 1994, which stipulates the mandatory application of the death penalty for the crime of murder.¹ Subsequently, on May 31, 2006, Mr. Cadogan presented an appeal to the Court of Appeal of Barbados and was unsuccessful. Finally he filed an application for special leave to appeal as a poor person with the Caribbean Court of Justice, but this motion was dismissed by the Court on December 4, 2006.

13. The Petitioner claims that his right to fair trial was violated for the following reasons: (1) the diminished responsibility defense was not adequately raised by the appointed judge before the jury in his trial; (2) he was not provided with independent psychiatric expertise; (3) the legal assistance provided to him by the State was insufficient; and (4) his attorney was ineffective.

14. Regarding the first claim, the Petitioner alleges that the trial judge should have placed the defense of diminished responsibility before the jury for its consideration and that he should have given the jury a careful and accurate direction on substantial impairment of mental responsibility due to Mr. Cadogan's alleged undisputed history of alcohol and drug abuse. Petitioners cite the "Offences Against the Person Act",² which exempts the accused from being convicted of murder in a situation of diminished responsibility. While the State has the burden of proof to establish the requisite intent for murder,³ petitioner states that the burden of proof for diminished responsibility rests with the defense. Petitioner cites relevant sections of the "Offences Against the Person Act":

Where a person kills or is a party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind, or any inherent causes, or induced by disease or injury, as substantially impaired his mental responsibility for his acts and omissions in doing or being party to the killing. On a charge of murder it shall be for the defense to prove that the person charged is by virtue of this section not liable to be convicted of murder.⁴

[I]f he was suffering from an abnormality of mind, whether arising from a condition of arrested or retarded development of mind, or any inherent causes, or induced by disease or injury, as substantially impaired his mental responsibility for his acts or omissions in doing or being party to

¹ The petitioner cites the Offences Against the Person Act, September 1st 1994, Ch.141, Section 2: "any person convicted of murder shall be sentenced to, and suffer, death". Another exception is applicable to persons under the age of 18 and to pregnant women. *Cf.* Boyce Case, notes number 38 and 39 referring to Section 14 of the Juvenile Offenders Act and Section 2 of the Sentence of Death (Expectant Mothers) Act

² The petitioner cites the Offences against the Person Act, Section 4 (2).

³ The petitioner cites the Offences against the Person Act, Section 3(1).

⁴ The petitioner cites the Offences against the Person Act Section 4.

the killing. On a charge of murder it shall be for the defense to prove that the person charged is by virtue of this section not liable to be convicted of murder.⁵

15. Regarding the second claim, the Petitioner alleges that the principle of equality of arms⁶ was not respected. Petitioner claims that Mr. Cadogan was not provided with independent expert psychiatric assistance by the State, whereas the prosecution was able to call on the services of expert witnesses to prove its case. The Petitioner states that since the burden of proof for diminished responsibility rests on the defendant, and because the jury is expected to make findings of fact about the defendant's mental state at the moment the crime was perpetrated, an expert opinion is essential for the defense of diminished responsibility. In this connection, the Petitioner claims that the State has previously declared that "it is always open to the defense to arrange for the Applicant to be seen by a psychiatrist attached to the Crown's Psychiatric Hospital" to secure free psychiatric services. However, the petitioner claims that Mr. Cadogan did not seek such assistance from the State on the belief that a psychiatrist attached to the Crown would not be capable of providing an impartial expert opinion, given that they are salaried officers who rely on the Crown for their advancement. The petitioner claims that the State's failure to provide an independent expert deprived Mr. Cadogan of an adequate opportunity to present his defense. The petitioner therefore pleads that persons charged with murder and who are consequently convicted and sentenced to the mandatory application of the death penalty should be entitled to funded expert psychiatric assistance.

16. As to the third claim, the Petitioner states that the right to an Attorney-at-Law in this matter should be examined against the offence for which the applicant was charged and the potential penalty. He alleges that any constitutional safeguard of the right to a lawyer should refer to the penalty to which the applicant is exposed in his charge, whereas the constitutional and legal safeguards of this right provided for by the Barbados Constitution do not refer to the potential penalty of the defendant. The *Community Legal Services Act*⁷ does provide for legal aid, but without distinguishing between various types of crimes which could require legal assistance. The Petitioner states that, considering the gravity of Mr. Cadogan's potential penalty, the defendant should have had access to a junior attorney and to a senior attorney. The Petitioner also alleges that the constitutional right to counsel ought to require that an accused be advised of any system for free, preliminary legal advice which exists in the jurisdiction at the time of his detention and how such advice can be accessed. The Petitioner claims that the fact that the police had not informed Mr. Cadogan of his "option to obtain free and immediate legal advice through the existing legal system in Barbados" therefore violated his right to a fair trial.

17. As to the fourth argument, the Petitioner states that Mr. Cadogan was deprived of his right to a fair trial because his attorney did not raise the defense of diminished responsibility and should have objected to the admission of some items of evidence during the trial, which the petitioner claims amount to errors which deprived Mr. Cadogan of his right to a fair trial.

⁵ The petitioner cites the Offences against the Person Act Section 4 (1).

⁶ The petitioners cite in support of their contentions: "In the opinion of this Court, for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants. It is important to recall that the judicial process is a means to ensure, insofar as possible, an equitable resolution of a difference. The body of procedures, of diverse character and generally grouped under the heading of the due process, is all calculated to serve that end. [...] To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination." Cf. I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999 §117 and 119 as cited in the Report on the Access to Justice as a guarantee of Economic, Social and Cultural Rights OEA/Ser.L/V/II.129, Doc. 4, 7 September 2007 § 187. Further, the principle of equality of arms also includes provisions related to the right to a fair trial since "This stipulation is drawn in part from the very nature and functions of procedural protections, which must in all instances be governed by the principle of fairness and which in their essence must be designed to protect, to ensure, or to assert the entitlement to a right or the exercise thereof. This includes recognizing and correcting any real disadvantages that persons concerned in the proceedings might have and thereby observing the principle of equality before the law and the corollary principle prohibiting discrimination of any kind." Cf. Report on Terrorism and Human Rights OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., 22 October 2002 § 399 as cited in Report on the Access to Justice as a guarantee of Economic, Social and Cultural Rights § 189.

⁷ Cf. Community Legal Services Act, Section 11 (1) and 20.

18. The Petitioner claims that the reservations made by the State of Barbados on November 5, 1981 upon ratification of the American Convention to Articles 4(4), 4(5) and 8(2)(e) of the American Convention do not apply here. In particular, the petitioner re-states the reservation made by the State of Barbados in connection with Article 8(2)(e), "Barbadian law does not provide as a minimum guarantee in criminal proceedings any inalienable right to be assisted by counsel provided by the State. Legal aid provides for certain scheduled offenses such as homicide, and rape"

B. The State

19. The State has not presented any substantial response to the facts alleged by the Petitioner, nor has it questioned the admissibility of the petition under consideration.

IV. ANALYSIS OF THE ISSUE OF ADMISSIBILITY

A. Preliminary considerations

1. The silence from the State

20. The Commission notes that the State at no time has responded to the Petitioners' allegations or questioned the petition's admissibility. The Commission recalls that Barbados is responsible for the international obligations it assumed under the terms of the American Convention of Human Rights. Article 48(1)(a) of the Convention is of particular relevance in that it establishes procedures to be followed when a petition or communication is referred to the Commission. The IACHR shall "request information from the government of the state indicated as responsible for the alleged violations" and "(t)his information shall be submitted within a reasonable period." The provisions of Article 48(1)(e) stipulate that the Commission "may request the states concerned to furnish any pertinent information." This obliges State parties to the Convention to provide the Commission with such information as it may require when analyzing individual petitions.

21. The Commission stresses the importance it accords to the information it requests as it provides a basis for the Commission's decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation of the States represents a fundamental obligation within the international procedural framework established by the Inter-American System :

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a States jurisdiction unless it has the cooperation of that State.⁸

22. The Commission and the Inter-American Court of Human Rights have also stated that "the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations; so long the contrary is not indicated by the record or is not compelled as a matter of law".⁹ Bearing this in mind, the Commission reminds the State of Barbados of its obligation to cooperate with the various agencies of the Inter-American system of human rights in order to facilitate their efforts to protect individual rights.

⁸ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988, Series C. N° 4, §135 and 136. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §43

⁹ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, N° 4, §138. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §45

2. Reservations made to the Convention by the State of Barbados

23. The State of Barbados issued reservations to select provisions of the American Convention at the time of its ratification on November 5, 1981.¹⁰ In the *Boyce et al. v. Barbados Case*, the State had notably argued that “its system of mandatory capital punishment also falls under the preclusive scope of its reservation, as its laws in this regard have remained unchanged since the ratification of the Convention”.¹¹ However, with respect to such reservations, the Inter-American Court stated in the same case that “a State reserves to no more than what is contained in the text of its reservation itself”,¹² that “[i]n this case, the text of the reservation does not explicitly state whether a sentence of death is mandatory for the crime of murder”¹³ and as such, “a textual interpretation of the reservations entered into by Barbados at the time of ratification of the American Convention clearly indicates that this reservation was not intended to exclude from the jurisdiction of this Court [...] the mandatory nature of the death penalty”¹⁴. Therefore, the Commission does not consider that the reservations made by Barbados upon adoption of the Convention are relevant to the analysis of the admissibility of the present petition.

24. The Commission considers that the reservations by Barbados do not affect its competence to analyze the *mandatory character* of the death penalty for the crime of murder in Barbados.

B. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Commission

25. The Commission will next address the remaining questions with respect to its competence. The Petitioner has *locus standi* to submit petitions to the Commission, in accordance with Article 44 of the Convention. The petition identifies as the alleged victim Mr. Cadogan, an individual person, whose rights under the Convention the State of Barbados is committed to respect and ensure. The Commission further notes that Barbados is a State party to the American Convention, having ratified it on November 27, 1982. The Commission therefore has competence *ratione personae* to study the petition.

26. The Commission has competence *ratione loci* to take cognizance of this petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

¹⁰ The text of the reservations made by the State of Barbados with respect to Articles 4(4), 4(5) and 8(2) (e), is the following:

In respect of 4(4) the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4)

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape

¹¹ I/A Court H.R., *Boyce et al. Case*. Judgment of November 20, 2007. Series C, Nº 169, § 14

¹² I/A Court H.R., *Boyce et al. Case*, *supra* note 9 § 17 as taken from *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 35, and *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 60-66.

¹³ I/A Court H.R., *Boyce et al. Case*, *supra* note 11 § 17

¹⁴ I/A Court H.R., *Boyce et al. Case*, *supra* note 11 § 17. At para. 16: “the first paragraph of the reservation in question specifically refers to Article 4(4) of the Convention, which excluded the application of capital punishment to political offenses or related common crimes in absolute terms. In this regard, the State explicitly expressed in the text of the reservation its purpose and extent, stating that it “wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence”. The second paragraph of the reservation similarly addresses the State’s particular concern over Article 4(5) of the Convention with regard to the application of capital punishment to “persons of 16 years and over or over 70 years of age”

27. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

28. Finally, the Commission has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

29. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

C. Other admissibility requirements

1. Exhaustion of domestic remedies

30. Article 46(1)(a) of the American Convention states:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law[.]

31. The Commission and the Court have repeatedly insisted on their “reinforcing and complementary” status within the inter-American system of protection of human rights.⁵ This status is reflected in Article 46(1)(a) of the Convention, which permits States parties to decide cases within their own legal framework, before there is need for recourse to an international proceeding.

32. In the instant case, the Petitioner argues that the alleged victim has taken adequate action before the courts of domestic jurisdiction provided by Barbadian law to seek a remedy for the alleged violations of his constitutional rights. He asserts that these actions have not been sufficient to ensure an effective remedy for rights allegedly violated by the State.

33. Following Mr. Cadogan’s conviction for murder, an appeal was brought to the Court of Appeal of Barbados. The Court of Appeal, which affirmed the lower court’s decision on May 31, 2006, concluded that the trial judge’s instruction was ‘proper’ according to the tried and tested formula by domestic courts. Subsequently on July 24, 2006, Mr. Cadogan applied for special leave to appeal, which was later joined by an application for a special leave to appeal as a poor person to the Caribbean Court of Justice, both of which were dismissed on December 4, 2006. The Court concluded that the claims of unfair trial based on ineffective counsel; necessity for junior and senior counsel; and the lack of independence by government employed expert psychiatrists were not adequately substantiated and did not give rise to a miscarriage of justice. The Court examined new evidence for consideration of the defense of diminished responsibility, which was found to be insufficient to afford any ground for an appeal.

34. In the instant case, the State has not provided observations regarding the admissibility of Mr. Cadogan’s claims, and has thereby tacitly waived its right to object to the admissibility of claims in the petition based on the exhaustion of domestic remedies requirement. The information before the Commission indicates that he in fact exhausted the ordinary remedies applicable in his case.

35. According to the Commission’s prior jurisprudence, Mr. Cadogan is not required to pursue a Constitutional motion before the courts in Barbados because he is indigent. Though technically still an available option, such a motion would be sufficiently complex as to require legal assistance and assistance, with such motions is not provided by Barbados. The State has not provided any observations or evidence to contend these allegations. Therefore, the Commission finds that Mr. Cadogan’s claims are not barred from consideration under Article 46(1)(a) of the Convention or Article 31(1) of the Commission’s Rules of Procedure.

36. Based upon these considerations, without prejudice to the merits of the case, the Commission considers that the requirements of Article 46(1)(a) of the Convention and Article 31(1) of the Rules of Procedure have been met.

2. Deadline for submission of the petition to the Commission

37. Article 46(1)(b) of the Convention stipulates that admission of a petition requires "that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

38. The instant petition was lodged with the Commission on December 29, 2006, less than six months after the Caribbean Court of Justice's decision dismissing the request for special leave for appeal on December 4th, 2006. Therefore, the petition meets the requirements with regard to timeliness established in Article 46(1)(b) of the Convention.

3. Duplication of proceedings

39. Article 46(1)(c) of the Convention provides that admissibility of a petition by the Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

40. From the statements of the Petitioner and the documents in the file, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization. The Commission therefore considers that in the instant case, the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Colorable Claim

41. For purposes of admissibility, the Commission is required to determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as provided for under Article 47(b), or whether the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 47(c). Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations enshrined in the American Convention on Human Rights and other applicable instruments." In addition, Article 34(a) of the Commission's Rules of Procedure requires the Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules.

42. The standard by which to assess the admissibility requirements is distinct from that applied when deciding upon the merits of a petition. The Commission must undertake a *prima facie* evaluation, not for the purpose of establishing the existence of a violation, but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a summary analysis that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases—one for admissibility and the other one for the merits—the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to establish a violation.

43. The petition alleges violations of Article 8 of the American Convention, the particulars which are summarized above at part III(A). The State has failed to provide any observations or information on the violations alleged by Mr. Cadogan. The Commission wishes to recall that pursuant to Article 46(1) of the Convention and Article 28 of the Commission's Rules of Procedure, a petition need only present the facts or situation that lay the foundation for a

possible violation of rights under the Convention; they are not obligated to name the specific articles they consider violated.¹⁵

44. In accordance with this rule and by applying the principle *iura novit curia*¹⁶, and in conformity with the past position taken by the Commission and the Inter-American Court of Human Rights on matters raising the mandatory death penalty, the Commission further considers that the imposition of mandatory death penalty on Mr. Cadogan could constitute possible violations of Articles 4(1), 4 (2), 5(1), 5(2) and 1(1) and 2 of the American Convention¹⁷.

45. Based upon the information provided by the Petitioners, and without prejudging the merits of the matter, the Commission finds that the petition contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by Article 8 of the American Convention, as well as Articles 4(1), 4(2), 5(1), 5(2) in connection with the State's obligations under 1(1) and 2 of the American Convention. Accordingly, the Commission finds that the Petitioners' claims are not precluded from consideration under Article 47(b) or (c) of the Convention or Article 34 of the Commission's Rules of Procedure.

V. CONCLUSIONS

46. Having examined the present petition, the Commission concludes that it is competent to consider it and finds that the petition is admissible in light of the claims raised with respect to article 8. In keeping with the principle of *iura curia novit*, and given the Commission's jurisprudence on the application of the mandatory death penalty, the Commission will in the merits phase analyze the possible application of Articles 4(1), 4(2), 5(1), 5(2), in relation with Articles 1(1) and 2 of the American Convention regarding the petitioner's conviction of mandatory death penalty. The Commission concludes likewise to inform the parties of this decision, and to proceed with its publication and its inclusion in its the Annual Report it will submit to the General Assembly of the OAS.

47. Based on the foregoing arguments of fact and of law set forth above, and without prejudging the merits of the case.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare the instant case admissible regarding the alleged violations of Mr. DaCosta Cadogan rights protected by Articles 4(1), 4(2), 5(1), 5(2), 8, in relation with Articles 1(1) and 2 of the American Convention.
2. To notify the parties of this decision;
3. To continue with the examination of the case; and

¹⁵ IACHR, Case 11.812, *Gabriel Lastra Pedrero* (Mexico), Report N° 24/99, Annual Report 1998 § 22; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Preliminary Objections. Judgment of September 1, 2001, Ser. C N° 82 (2001) § 39-42

¹⁶ I/A Court H.R., *Godínez Cruz Case*. Judgment of 20 January 1989. Series C No. 5 (1989) § 172. Cf. I/A Court H.R., *Durand and Ugarte Case*. Judgment of 16 August 2000. Series C No. 68 (2000) § 76; and I/A Court H.R., *Castillo Petrucci et al. Case*. Judgment of May 30, 1999

¹⁷ The past practice of the Commission regarding mandatory death penalty included establishing violations of Articles 4(1), 5(1), 5(2), 8(1) in relation to Article 1(1) of the Convention. Cf. *Hilaire, Constantine and Benjamin et al. Case*, supra note 20 § 88; See also I/A Court of H.R., *Case of Boyce et al.*, supra note 11 § 47; I/A Court H.R., *Case of Raxcacó Reyes*, Judgment of September 15, 2005, Series C No. 133 § 91e); IACHR, Case 12.023 *Desmond McKenzie and al.* (Jamaica), Report N° 41/00, Annual Report 1999, see § 3, 204-206, 209 and 211; IACHR, Case 11.743, *Rudolph Baptiste* (Grenada) Report N° 38/00, Annual Report 2000 § 126-128; IACHR, Case 12.275, *Aitken* (Jamaica), Report N° 58/02, Annual Report 2002 § 109; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*, supra note 20 §101-108 and 211; I/A Court H. R., *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133

4. To make public this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 4th day of the month of March, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González Morales, Second Vice-Chairman; Sir Clare K. Roberts, Florentín Meléndez, Paulo Sérgio Pinheiro and Victor E. Abramovich, Commissioners.

^[11] The petitioner cites the Offences Against the Person Act, September 1st 1994, Ch.141, Section 2: “any person convicted of murder shall be sentenced to, and suffer, death”. Another exception is applicable to persons under the age of 18 and to pregnant women. *Cf.* Boyce Case, notes number 38 and 39 referring to Section 14 of the Juvenile Offenders Act and Section 2 of the Sentence of Death (Expectant Mothers) Act.

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^[16] The petitioners cite in support of their contentions: “In the opinion of this Court, for “the due process of law” a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants. It is important to recall that the judicial process is a means to ensure, insofar as possible, an equitable resolution of a difference. The body of procedures, of diverse character and generally grouped under the heading of the due process, is all calculated to serve that end. [...] To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination.” *Cf.* I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999 §117 and 119 as cited in the Report on the Access to Justice as a guarantee of Economic, Social and Cultural Rights OEA/Ser.L/V/II.129, Doc. 4, 7 September 2007 § 187. Further, the principle of equality of arms also includes provisions related to the right to a fair trial since “This stipulation is drawn in part from the very nature and functions of procedural protections, which must in all instances be governed by the principle of fairness and which in their essence must be designed to protect, to ensure, or to assert the entitlement to a right or the exercise thereof. This includes recognizing and correcting any real disadvantages that persons concerned in the proceedings might have and thereby observing the principle of equality before the law and the corollary principle prohibiting discrimination of any kind.” *Cf.* Report on Terrorism and Human Rights OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., 22 October 2002 § 399 as cited in Report on the Access to Justice as a guarantee of Economic, Social and Cultural Rights § 189.

^[17] *Cf.* Community Legal Services Act, Section 11 (1) and 20.

^[18] I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988, Series C. N° 4, §135 and 136. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §43.

^[19] I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, N° 4, §138. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §45.

^[100] The text of the reservations made by the State of Barbados with respect to Articles 4(4), 4(5) and 8(2) (e), is the following:

In respect of 4(4) the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4)

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape.

^[111] I/A Court H.R., *Boyce et al. Case*. Judgment of November 20, 2007. Series C, N° 169, § 14.

^[121] I/A Court H.R., *Boyce et al. Case*, *supra* note 9 § 17 as taken from *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 35, and *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 60-66.

^[131] I/A Court H.R., *Boyce et al. Case*, *supra* note 11 § 17.

^[141] I/A Court H.R., *Boyce et al. Case*, *supra* note 11 § 17. At para. 16: “the first paragraph of the reservation in question specifically refers to Article 4(4) of the Convention, which excluded the application of capital punishment to political offenses or related common crimes in absolute terms. In this regard, the State explicitly expressed in the text of the reservation its purpose and extent, stating that it “wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence”. The second paragraph of the reservation similarly addresses the State’s particular concern over Article 4(5) of the Convention with regard to the application of capital punishment to “persons of 16 years and over or over 70 years of age”.

^[151] IACHR, Case 11.812, *Gabriel Lastra Pedrero* (Mexico), Report N° 24/99, Annual Report 1998 § 22; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Preliminary Objections. Judgment of September 1, 2001, Ser. C N° 82 (2001) § 39-42.

^[16] I/A Court H.R., *Godínez Cruz Case*. Judgment of 20 January 1989. Series C No. 5 (1989) § 172. Cf. I/A Court H.R., *Durand and Ugarte Case*. Judgment of 16 August 2000. Series C No. 68 (2000) § 76; and I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52 (1999) § 166; I/A Court H.R., *Hilaire, Constantine, Benjamin et al.*, *supra* note 20 para. 107.

^[17] The past practice of the Commission regarding mandatory death penalty included establishing violations of Articles 4(1), 5(1), 5(2), 8(1) in relation to Article 1(1) of the Convention. Cf. *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 20 § 88; See also I/A Court of H.R., *Case of Boyce et al.*, *supra* note 11 § 47; I/A Court H.R., *Case of Raxcacó Reyes*, Judgment of September 15, 2005, Series C No. 133 § 91e); IACHR, Case 12.023 *Desmond McKenzie and al.* (Jamaica), Report N° 41/00, Annual Report 1999, see § 3, 204-206, 209 and 211; IACHR, Case 11.743, *Rudolph Baptiste* (Grenada) Report N° 38/00, Annual Report 2000 § 126-128; IACHR, Case 12.275, *Aitken* (Jamaica), Report N° 58/02, Annual Report 2002 § 109; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 20 §101-108 and 211; I/A Court H. R., *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133.