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**INTER-AMERICAN COMMISSION ON HUMAN
RIGHTS**

**APPLICATION TO THE INTER-AMERICAN COURT
OF HUMAN RIGHTS IN THE CASE OF**

**TYRONE DACOSTA CADOGAN
(CASE 12.645)**

AGAINST THE REPUBLIC OF BARBADOS

DELEGATES:

**Commissioner Paolo Sergio Pinheiro
Executive Secretary of the the IACHR, Santiago A. Canton
Deputy Executive Secretary of the IACHR, Elizabeth Abi-Mershed,**

ADVISERS:

**Mario López-Garelli
Ismene Zarifis
Manuela Cuvi Rodríguez**

**October 31, 2008
Washington, D.C.
1889 F Street, N.W**

APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS BEFORE THE
INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE 12.645
TYRONE DACOSTA CADOGAN

000005

V.

BARBADOS

1. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," or "the Court,") an application in Case 12.645 of Tyrone DaCosta Cadogan (hereinafter "the victim") versus Barbados (hereinafter "the State" or "Barbados"), in keeping with the terms of Article 51 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

2. The Inter-American Commission asks the Court to determine the international responsibility of the State of Barbados for the violation of Articles 4 (1) and (2) (Right to Life), 5 (1) and (2) (Right to Humane Treatment), and 8 (Right to a Fair Trial), in conjunction with Article 1 (1) (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") to the detriment of Mr. Cadogan.

3. On May 18, 2005 the Supreme Court of Barbados found Mr. Tyrone DaCosta Cadogan guilty of murder and sentenced him to death by hanging, pursuant to Barbados' Offences Against the Persons Act 1994, which prescribed capital punishment as the mandatory punishment for the crime of murder. As a consequence of a "savings" clause in the Constitution of Barbados, the domestic courts cannot declare the mandatory death sentence to be invalid even though it violates fundamental rights protected under Barbados' Constitution and the American Convention. Mr. Cadogan applied to the Court of Appeal of Barbados to challenge the murder conviction, but the Appeal's Court 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. He is currently incarcerated at Her Majesty's Prison Dodds.

4. Mr. Cadogan case follows prior cases presented before the Inter-American Court to challenge the mandatory imposition of the sentence of death absent any consideration of the specific circumstances of the crime, and without any consideration for

mitigating factors.¹ As in those prior cases, the “savings clause” effectively insulate this penalty from effective challenge or reform.

5. The present case has been processed pursuant to the American Convention and is submitted before the Court according to Article 33 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter “the Rules of Procedure of the Court”). Also, a copy of Report N° 60/08 prepared in compliance to Article 50 of the Convention is attached to this application.² This report was adopted by the Commission on July 25, 2008 and was transmitted to the State on August 1, 2008, with a period of two months for it to adopt the recommendations contained therein. The State replied on October 3, 2008, that it was “taking into consideration the Commission’s recommendation [...] that it commute Mr. Cadogan’s death sentence” and that it was “assessing the appropriate modalities for implementing [the other recommendations]”. Considering that the State did not fully implement its recommendations and according to Articles 51 (1) of the Convention and 44 of the Rules of Procedure of the IACHR, the Inter-American Commission decided to submit the case to the jurisdiction of the Inter-American Court on October 29, 2008.

6. It is important for the Court to deliberate and rule upon the issues raised in this Application. First, the case involves the application of capital punishment through mandatory sentencing. In this regard, Barbados is manifestly failing to respect the most fundamental right protected under the American Convention, the right to life. The Commission therefore submits that the matter warrants consideration by the full range of protective mechanisms in the inter-American human rights system, including the contentious jurisdiction of the Inter-American Court. Second, as will be demonstrated in this proceeding, a “savings clause” under the Constitution of Barbados prevents the courts in Barbados from declaring the mandatory death penalty to contravene fundamental rights and freedoms otherwise guaranteed under the Constitution and the American Convention. Therefore, this Court constitutes the only forum available for the victim to obtain an effective and binding recourse for protection against acts that violate his fundamental rights recognized by the constitution and laws of his state and by the American Convention on Human Rights.

II. PURPOSE OF THE APPLICATION

7. The purpose of the present application is to ask the Court to conclude and declare that the State of Barbados:

¹ I/A Court of H.R., *Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94; I/A Court H.R., *Boyce et al. v. Barbados Case*, Judgment of November 20, 2007, Series C, N°169.

² Appendix D.1, IACHR, Report N° 60/08, Tyrone DaCosta Cadogan, Barbados, adopted July 25, 2008.

a) By imposing the mandatory death penalty on Mr. Tyrone DaCosta Cadogan violated Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of the same treaty; and

b) Has not fulfilled its obligations under Article 2 of the American Convention on Human Rights in relation to section 2 of the Offences Against the Person Act 1994 of Barbados and section 26 of the Constitution of Barbados because it has not brought its domestic legislation into compliance with the rights and freedoms protected under the American Convention.

8. As a result of the above mentioned, the Inter-American Commission requests the Court to order the State to:

1. Grant Mr. Cadogan the commutation of his death sentence;

2. Adopt such legislative or other measures as may be necessary to safeguard against any imposition of the death penalty not in conformity with the terms of Articles 4, 5 and 8 of the American Convention; and

3. Adopt, within a reasonable time, such legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and specifically, remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws".

III. REPRESENTATION

8. According to Articles 22 and 33 of the Rules of Procedure of the Court, the Commission has designated Commissioner Paolo Sergio Pinheiro, and Mr. Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Elizabeth Abi-Mershed, Deputy Executive Secretary of the IACHR, Mario López-Garelli, Ismene Zarifis and Manuela Cuvi Rodriguez, have been appointed to serve as legal advisors.

IV. JURISDICTION OF THE COURT

9. According to Article 62 (3) of the American Convention, the Inter-American Court has jurisdiction over any case concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the State Parties to the case recognize or have recognized the jurisdiction of the Court.

10. The State of Barbados ratified the American Convention on November 27, 1982, and accepted the contentious jurisdiction of the Court on June 4, 2000. Therefore, the Court has jurisdiction to hear this case.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION

11. On December 29, 2006, the Commission received a petition from Messrs. Alair P. Shepherd Q.C. and M. Tariq Khan (the "Petitioners") on behalf of Mr. Tyrone DaCosta Cadogan. With the petition, they requested the adoption of precautionary measures on behalf of Mr. Cadogan so that no steps be taken to carry out the death sentence pending the determination by the Commission³. On January 3, 2007, the Commission acknowledged receipt of the petition and assigned it petition number 1460-06.⁴

12. 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 25 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.⁵

13. 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.⁶ On January 18, 2008 the Commission requested additional information from the petitioner.⁷

14. On February 22, 2008, the Commission received additional information from the petitioner and transmitted this information to the State for its observations.⁸

15. On March 4, 2008, during its 131st period of sessions, the IACHR adopted Admissibility Report N° 7/08.⁹ In such report the Commission declared that Mr. Cadogan's petition was admissible in respect to Articles 4(1), 4(2), 5(1), 5(2) and 8, in relation to Articles 1(1) and 2 of the American Convention. Report 7/08 was transmitted to the State and to the Petitioners by note dated March 24, 2008.¹⁰ In the same note, in accordance with Article 38(3) of the Commission's Rules of Procedure, the Commission requested that

³ Appendix E.1, Petition, December 29, 2006.

⁴ Appendix E.2, IACHR, Communication of January 3, 2007.

⁵ Appendix E.3, IACHR, Communication of January 23, 2007.

⁶ Appendix E.4, IACHR, Communication of January 14, 2008.

⁷ Appendix E.5, IACHR, Communication of January 18, 2008.

⁸ Appendix E.6, Petitioners, Communication of February 18, 2008 and IACHR, Communication of February 22, 2008.

⁹ Appendix D.2, IACHR, Admissibility Report N° 7/08, adopted March 4, 2008.

¹⁰ Appendix E.7, IACHR, Communication of March 24, 2008.

the Petitioners provide any additional observations that they may have on the merits of the case within a period of one month. Pursuant to Article 38(2) of its Rules, the Commission also placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention and requested that the parties inform the Commission expeditiously whether they were interested in pursuing a friendly settlement of the case.

16. The Commission received additional observations from the Petitioners on the merits of the petition on May 2, 2008. At that time they also informed the Commission that they were adding Mr. Saul Lehrfreund and Mr. Pervais Jabbar of the law firm Simons Muirhead & Burton as co-petitioners.¹¹

17. By note dated May 5, 2008, the Commission transmitted the pertinent parts of Petitioners' observations to the State and requested that the State of Barbados submit any additional observations that it may have on the merits of the Petitioners' petition within a period of one month, in accordance with Article 38(3) of the Commission's Rules. In relation to the precautionary measures, the Commission also requested the State updated information on Mr. Cadogan's situation and any steps adopted by Barbados to protect his life and physical integrity. In particular, the Commission requested information as to whether warrants of execution had been issued for Mr. Cadogan and/or whether such warrants had been read to him.¹²

18. On the same date, the Commission requested the Petitioners to submit additional information within one month, in order for the Commission to proceed with the analysis of the case on the merits.¹³

19. On July 4, 2008 the Commission received a communication from the State of Barbados by which it submitted additional information in response to the Commission's request made on May 5, 2008. In relation to the precautionary measures, the State informed the Commission that warrants of execution had not been issued against Mr. Cadogan pursuant to the Caribbean Court of Justice decision in the case of *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*. The State indicated that according to that decision "no warrant of execution can be issued [...] while either the Inter-American Commission or the I/A Court is processing the petition [...] the doctrine of legitimate expectations provide an individual the right to conclude his petition before the Inter-American Commission, to have the Commission's reports considered by the Barbados Privy Council and to have his execution stayed until those processes have been completed."¹⁴

¹¹ Appendix E.8, Petitioners, Communication of May 2, 2008.

¹² Appendix E.9, IACHR, Communication of May 5, 2008 to the State.

¹³ Appendix E.9, IACHR, Communication of May 5, 2008 to Petitioners.

¹⁴ Appendix E.12, State, Communication of July 4, 2008. See also IACHR, Communication of July 8, 2008. See also, Appendix A.15, *Attorney General et al v- Jeffrey Joseph and Lennox Ricardo Boyce* (2006) CCJ Appeal No. CV 2 of 2006, BB Civil Appeal No. 29 of 2004 (November 8, 2006)

20. On July 9, 2008 the Commission received another communication from the State in which it presented observations on the admissibility of the petition and responded to the petitioner's allegations of a violation of due process.¹⁵ On July 10, 2008 the Commission requested the Petitioners to submit their observations within one month.¹⁶

21. On July 25, 2008, during its 132nd period of sessions, the IACHR considered the positions of the parties and approved the merits Report N° 60/08, pursuant to Article 50 of the American Convention and 42 of its Rules of Procedure, among others. In such report, the IACHR concluded that the State of Barbados:

by imposing the mandatory death penalty on the victim in this case, violated the rights of this victim under Articles 4(1), 4(2), 5(1) and 5(2) and 8 of the Convention in connection with Articles 1(1) and 2 by sentencing him to a mandatory death penalty.¹⁷

22. Based on the analysis and conclusions of such report, the Inter-American Commission considered that the State should adopt the following recommendations:

1. That it grant the victim commutation of his death sentence;
2. That it adopt such legislative or other measures as may be necessary to safeguard against any imposition of the death penalty not in conformity with the terms of Articles 4, 5 and 8 of the American Convention; and,
3. That it adopt, within a reasonable time from the date of notification of the present report, such legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and specifically, remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws".¹⁸

23. On August 1, 2008, the Inter-American Commission, pursuant to the terms of Article 43(2) of its Rules of Procedure, forwarded the report on merits to the State and granted it a period of two months to inform on the measures adopted to comply with the recommendations contained therein.¹⁹ On the same date, according to Article 43(3) of its Rules of Procedure, the Commission notified the Petitioners the adoption of the report and

¹⁵ Appendix E 13, State, Communication of July 9, 2008.

¹⁶ Appendix E 13, IACHR, Communication of July 10, 2008.

¹⁷ Appendix D.1, IACHR, Report N° 60/08, Tyrone DaCosta Cadogan, Barbados, adopted July 25, 2008, para. 118.

¹⁸Id., para 123.

¹⁹ Appendix E 14, IACHR, Communication dated July 31, 2008 and transmitted on August 1, 2008. see also Appendix E.15, IACHR, Communication dated August 15, 2008, where two editing errors were corrected.

its transmittal to the State and asked them to provide their position in relation with the referral of the case to the Inter-American Court.²⁰

24. On August 15, 2008 the Petitioners requested a 30 day extension to the Commission which was granted.²¹ On September 12, 2008 the Petitioners informed the Commission that they were of the opinion that the case should be sent to the Court and submitted the information and documentation requested by the Commission.²²

25. On August 14, 2008 the State sent a copy of a letter from Dr. Brian MacLachlan MBBS DM (Psych), Senior Consultant Psychiatrist, and on October 3, 2008 it referred to the merits report and replied that it was "taking into consideration the Commission's recommendation [...] that it commute Mr. Cadogan's death sentence" and that it was "assessing the appropriate modalities for implementing [the other recommendations]."²³ This information was transmitted to the Petitioners on October 17, 2008.²⁴

26. Considering that the State did not adopt its recommendations and according to Articles 51 (1) of the Convention and 44 of the Rules of Procedure of the IACHR, and taking into account the position of the Petitioners, on October 29, 2008 the Inter-American Commission decided to submit the case to the jurisdiction of the Inter-American Court. On the same date the Commission decided to request the Court to adopt provisional measures on behalf of Mr. Cadogan to protect his life and integrity. The request is being sent by a separate communication dated October 31, 2008.

VI. CONSIDERATIONS OF FACT

A. Relevant domestic legislation and jurisprudence

27. Several legislative provisions under the laws of Barbados and related domestic jurisprudence are relevant to the issues raised in the present Application.

1. Offences Against the Person Act 1994 of Barbados

28. Mr. Cadogan was tried by Barbados for the crime of murder, was convicted, and was sentenced to death by hanging under section 2 of the State's *Offences Against the Person Act 1994*, which prescribes the death penalty as the automatic and mandatory

²⁰ Appendix E 14, IACHR, Communication dated July 31, 2008 and transmitted on August 1, 2008.

²¹ Appendix E.16, Petitioners, Communication of August 15, 2008 and IACHR, Communication dated August 27, 2008.

²² Appendix E.17, Petitioners, Communication of September 12, 2008 and IACHR, Communication of September 18, 2008 acknowledging receipt

²³ Appendix E 18, State of Barbados, Communications of August 14, 2008 and October 3, 2008.

²⁴ Appendix E.19, IACHR Communication of October 17, 2008.

punishment for murder in the following terms: "Any person convicted of murder shall be sentenced to, and suffer, death."²⁵

29. Pursuant to this provision, once an individual is convicted of the crime of murder, neither the trial court nor the appellate courts in Barbados may evaluate whether the death penalty is an appropriate punishment in the particular circumstances of the offender and his or her crime. Death is the compulsory punishment to be imposed by the courts.

2. Savings Clause under the Constitution of Barbados

30. Section 26 of the Constitution of Barbados prevents the courts in Barbados from holding laws that were enacted or made before the date when the Constitution came into force, November 30, 1966, are inconsistent with the fundamental rights and freedoms prescribed under sections 11 to 23 of the Constitution of Barbados. Section 26 reads:

26. 1. Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question -

a. is a law (in this section referred to as "an existing law") that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day;

b. repeals and re-enacts an existing law without alteration; or

c. alters an existing law and does not thereby render that law inconsistent with any provision of sections 12 to 23 in a manner in which, or to an extent to which, it was not previously so inconsistent.

2. In subsection (1)(c) the reference to altering and existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in subsection (1) "written law" includes any instrument having the force of law and in this subsection and subsection (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.²⁶

31. Section 26 is referred to as a "Savings Clause", because it immunizes pre-constitution laws from constitutional challenge even if those laws are inconsistent with fundamental rights and freedoms enshrined in the constitution.

32. In its decision in the case of *Boyce and Joseph v. The Queen*, a 5 to 4 majority of the Judicial Committee of the Privy Council, then the highest appellate court for Barbados, specifically held that the mandatory death penalty under section 2 of the Offences Against the Person Act could not be held by the domestic courts to be inconsistent with the right under section 15(1) of the Constitution not to be subjected to

²⁵ Appendix A 4, Offences Against the Person Act 1994-18, Laws of Barbados, s. 2.

²⁶ Appendix A 1, Constitution of Barbados, s. 26.

inhuman or degrading punishment because the law was an "existing law" within the meaning of section 26 of the Constitution of Barbados.²⁷

3. Prerogative of Mercy under the Constitution of Barbados

33. Section 78(3) of the Constitution of Barbados provides the Governor-General of Barbados with the power to exercise the prerogative of mercy in respect of persons who have been sentenced to death. According to the provision, when a person has been sentenced to capital punishment, the Governor-General is required to have a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Governor-General may require, to be forwarded to the Privy Council of Barbados, in order for the Privy Council to advise the Governor-General on the exercise of the prerogative of mercy in respect of the condemned person. The relevant provisions of the Constitution read as follows:

78. 1. The Governor-General may, in Her Majesty's name and on Her Majesty's behalf -

a. grant to any person convicted of any offense against the law of Barbados a pardon, either free or subject to lawful conditions;

b. grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offense;

c. substitute a less severe form of punishment for that imposed on any person for such an offense; or

d. remit the whole or part of any punishment imposed on any person for such an offense or any penalty or forfeiture otherwise due to the Crown on account of such an offense.

2. The Governor-General shall, in the exercise of the powers conferred on him by subsection (1) or of any power conferred on him by any other law to remit any penalty or forfeiture due to any person other than the Crown, act in accordance with the advice of the Privy Council.

3. Where any person has been sentenced to death for an offense against the law of Barbados, the Governor-General shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Governor-General may require, to be forwarded to the Privy Council so that the Privy Council may advise him on the exercise of the powers conferred in him by subsection (1) in relation to that person.

4. The power of requiring information conferred upon the Governor-General by subsection (3) shall be exercised by him on the recommendation of the Privy Council or, in any case in which in his judgment the matter is too urgent to admit of such

²⁷ Appendix A.16, *Lennox Boyce & Jeffrey Joseph v. The Queen (Barbados)* [2004] UKPC 32, Privy Council Appeal No. 99 of 2002, Judgment of July 7, 2004 (JCPC), paras. 1-6

recommendation being obtained by the time within which it may be necessary for him to act, in his discretion.²⁸

34. Section 78 was amended in 2002 to add two new subsections that permit condemned prisoners to make written representations in respect of the exercise of the prerogative of mercy and to permit the establishment of time limits for condemned individual to consult any person or body of persons outside of Barbados in relation to his or her offence:

78(5) A person has the right to submit directly or through a legal or other representative written representation in relation to the exercise by the Governor-General or the Privy Council any of their respective functions under this section but is not entitled to an oral hearing.

(6) The Governor-General, acting in accordance with the advice of the Privy Council, may by instrument under the Public Seal direct that there shall be time-limits within which persons referred to in subsection (1) may appeal to, or consult, any person or body of persons (other than Her Majesty in Council) outside Barbados in relation to the offence in question; and, where a time-limit that applies in the case of a person by reason of such a direction has expired, the Governor-General and the Privy Council may exercise their respective functions under this section in relation to that person, notwithstanding that such an appeal or consultation as aforesaid relating to that person has not been concluded.²⁹

35. As in most other Commonwealth jurisdictions, the prerogative of mercy is a discretionary power granted to the Executive branch of government, exercised through the Governor-General of Barbados who is appointed by and serves as the representative of Her Majesty the Queen, the Head of State of Barbados.³⁰ The Privy Council of Barbados, which advises the Governor-General on the exercise of the prerogative of mercy in death penalty cases, is likewise part of the Executive branch, consisting of such persons "as the Governor General, after consultation with the Prime Minister, may appoint by instrument under the Public Seal."³¹

36. On September 12, 2000, the Judicial Committee of the Privy Council issued a judgment in the case *Neville Lewis et al. v. The Attorney General of Jamaica* in which it found that an individual's petition for mercy under the Jamaican Constitution was open to judicial review and that the procedure for mercy must be exercised by procedures that are fair and proper. The Privy Council held in this respect that a condemned individual should be given sufficient notice of the date on which the Jamaican Privy Council will consider his or her case, afforded an opportunity to make representations in support of his or her case,

²⁸ Appendix A 1, Constitution of Barbados, s. 78.

²⁹ Appendix A 2, Constitution (Amendment) Act, 2002-14 (29 August 2002), s. 4.

³⁰ Appendix A 1, Constitution of Barbados, s. 28.

³¹ Appendix A 1, Constitution of Barbados, s. 76(1)

and receive copies of the documents that will be considered by the Jamaican Privy Council in making its decision.³²

B. Judicial Proceedings in Barbados for the Crime of Murder

37. Under the domestic criminal law of Barbados, trials for murder under the Offences Against the Person Act take place before a Judge and Jury in the High Court division of the Supreme Court of Barbados.³³ As noted above, where a defendant is found guilty of the crime of murder, the Offences Against the Person Act mandates that a sentence of death be imposed.

38. Domestic judicial review proceedings in respect of a criminal conviction, including a conviction for the crime of murder, may take two forms, a criminal appeal against conviction, or a Constitutional Motion under Section 24 of the Constitution. In both procedures, an appeal lies from the first instance court to the Court of Appeal of Barbados. Until April 8, 2005, a further appeal was available with special leave to the Judicial Committee of the Privy Council in London.³⁴ On February 14, 2002, Barbados signed the Agreement Establishing the Caribbean Court of Justice³⁵ and subsequently amended its Constitution effective April 8, 2005 to render the Caribbean Court of Justice as the final appellate court for the country.³⁶

39. The Caribbean Court of Justice (CCJ) is the regional judicial tribunal established by the Agreement Establishing the Caribbean Court of Justice³⁷ under the 2001 Revised Treaty of Chaguaramas³⁸ of the Caribbean Community (CARICOM). The Court was created in 2003 and inaugurated on April 16, 2005 in Port of Spain, Trinidad & Tobago.

40. The Court has both original and appellate jurisdiction. Respecting its appellate jurisdiction, for those States that ratify the Agreement Establishing the CCJ, the Court becomes the final court of appeal in both civil and criminal matters from common law courts within the jurisdictions of member states of the community, in most instances

³² Appendix A.7, *Neville Lewis et al. v. The Attorney General of Jamaica and The Superintendent of St. Catherine District Prison*, Privy Council Appeals Nos. 60 of 1999, 65 of 1999, 69 of 1999 and 10 of 2000 (12 September 2000)(J.C.P.C.), at p. 23.

³³ Appendix A.8, Criminal Procedure Act of Barbados, s. 7.

³⁴ Appendix A.1, Constitution of Barbados, s. 88.

³⁵ Appendix A.11, Agreement Establishing the Caribbean Court of Justice [also available at http://www.caribbeancourtofjustice.org/courtadministration/ccj_agreement.pdf]

³⁶ Appendix A.3, Constitution (Amendment) Act 2003-10. See also Appendix A.9 – Caribbean Court of Justice Act, 2003-9; Appendix A.10 – Caribbean Court of Justice, *Barbados Rediffusion Services Ltd v. Astra Mirchandani et al.*, CCJ Appeal No. CV 1 of 1005, BB Civil Appeal No. 18 of 2000, para. 4.

³⁷ Appendix A.11, Agreement Establishing the Caribbean Court of Justice

³⁸ Appendix A.12, 2001 Revised Treaty of Chaguaramas.

replacing the jurisdiction of the Judicial Committee of the Privy Council.³⁹ As of the date of this application, two countries, Barbados and Guyana, have accepted the appellate jurisdiction of the CCJ.

B. Facts regarding Tyrone DaCosta Cadogan

41. On December 9, 2003 police authorities questioned Mr. Cadogan in connection with the death of Ms. Paulette Braithwaite. Prior to questioning, police authorities asked Mr. Cadogan if he wished to have an attorney-at-law present, which request he reportedly rejected outright.⁴⁰ At the time of questioning, Mr. Cadogan gave a voluntary statement regarding the events surrounding the death of Ms. Braithwaite on December 8, 2003. Mr. Cadogan signed the statement at that time.⁴¹ The statement was later entered into evidence at Mr. Cadogan's trial, to which no objection was made by the defense at trial.⁴² Subsequent to Mr. Cadogan's arrest, his family contacted attorney-at-law Mr. Waldo Waldron-Ramsey to represent Mr. Cadogan at trial.⁴³

42. On May 18, 2005 the Supreme Court of Barbados found Mr. DaCosta Cadogan guilty of murder and sentenced him to death by hanging, pursuant to section 2 of the Offenses Against Persons Act, which calls for the mandatory application of the death penalty for murder. Therefore, once the jury found Mr. Cadogan guilty of murder, the trial judge was required to sentence him to death. In this case, following the determination by the jury that Mr. Cadogan was guilty of murder, the trial judge pronounced as follows following Mr. Cadogan's conviction for murder:

Tyrone DaCosta Cadogan, you have been convicted of the crime of murder. The sentence of the court is that you be taken from this place, to the place whence you came, that you be there kept until the time of execution; that you there suffer death by hanging and that your body be buried within the precincts of the jail where you last have been confined, and may the Lord have mercy on your soul.⁴⁴

43. At trial, Mr. Cadogan was represented by attorney-at-law Dr. Waldo Waldron-Ramsey.⁴⁵ Evidence was proffered by the prosecution, including witness

³⁹ Appendix A.11, Agreement Establishing the Caribbean Court of Justice. Art. XXVI. See also Appendix A 3 – Constitution (Amendment) Act 2003-9, s. 9; Appendix A.9, Caribbean Court of Justice Act, ss. 6-8.

⁴⁰ Appendix B.1, Supreme Court of Barbados (Criminal Division); Her Majesty the Queen v. Tyrone DaCosta Cadogan (18 May 2005).

⁴¹ Id.

⁴² Id.

⁴³ Appendix B.4, Caribbean Court of Justice Appeal No AL 6 of 2006 (December 4, 2006) para 16

⁴⁴ Appendix B.1, Supreme Court of Barbados (Criminal Division); Her Majesty the Queen v. Tyrone DaCosta Cadogan (18 May 2005), p. 226

⁴⁵ Appendix B.1, Supreme Court of Barbados (Criminal Division); Her Majesty the Queen v. Tyrone DaCosta Cadogan (18 May 2005).

testimony. Mr. Cadogan was the principal witness offered by the defense. Justice William Chandler of the Supreme Court of Barbados issued a standard jury instruction after hearing all the evidence. Included in the instruction was the criteria needed to find the defendant guilty of murder, including the requirement that the jury must be certain without a reasonable doubt of the defendant's intent to kill the victim or cause serious bodily harm. The judge's instruction to the jury required their consideration of all the evidence in determining if the requisite criminal intent was present at the time of the crime, and included,

In deciding whether he intended to kill Paulette Brathwaite or cause her some serious bodily harm, you must take into account all of the evidence in relation to his consumption of alcohol and his use of illegal substances; that he said to you that he was shaky; that he had smoked two joints; that he had drunk rum, gin and vodka.

If you think that he was drunk and/or so affected by drugs that he did not intend or may not have intended to kill Paulette Brathwaite or cause her serious bodily injury at the time that he stabbed her, then you must acquit him of the charge of murder. Likewise, if you entertain any reasonable doubt whether he was so affected by drink and/or the use of drugs that he did not have the intent at the time of the stabbing to kill Paulette Braithwaite or cause her some serious bodily injury, you will acquit him of the charge of murder. But if you are sure, as a result of the evidence led by the Prosecution, that despite his drunkenness and/or the affect of the drugs upon him, he intended to kill Paulette Brathwaite or cause her serious bodily harm, then this part of the case, the intent, is proved against him. A drunken intent, or an intent which is drug induced is still an intent.

Mr. Foreman and members, if because of the accused's consumption of alcohol and /or the use of drugs, in this case marijuana, you believe that the accused's state of mind was such that at the time of the stabbing, his ability to exercise voluntary control over his acts was totally destroyed, then he is not guilty of the offence of the murder, but is guilty of the offence of manslaughter. This issue has been raised on the evidence by the defence and it is for you to consider.⁴⁶

44. On June 2, 2005, Dr. Waldo Waldron-Ramsey filed an Application for Leave to Appeal to the Court of Appeal of Barbados against the conviction and sentence of Mr. Cadogan.⁴⁷ At that time, the application reflected that Mr. Cadogan was being represented by Dr. Waldo Waldron-Ramsey and that he was requesting the Court to provide the defendant with legal aid. At the time of the appeal, the record shows that Mr. Cadogan continued to be represented by Dr. Waldo Waldron-Ramsey. At no time during Mr.

⁴⁶ Appendix B.1, Supreme Court of Barbados (Criminal Division); Her Majesty the Queen v Tyrone DaCosta Cadogan (18 May 2005) pp. 142-3 and 157.

⁴⁷ See Notice of Appeal or Application for Leave to Appeal Conviction or Sentence, Criminal Appeal No 16 of 2005 at Appendix B 1 p. (i).

Cadogan's trial or the appeal stage was Mr. Cadogan represented by legal counsel provided by the State.⁴⁸

45. On March 2, 2006 and May 31, 2006, the Application for Leave to Appeal was granted and heard by the Court of Appeal of Barbados.⁴⁹ The sole ground for appeal put forth stated that the "conviction was unsafe or unsatisfactory and should be quashed because the intention required to support the charge of murder was not satisfactorily established on the evidence adduced at the trial."⁵⁰ After reviewing the trial court record, including evidence submitted at trial and the applicable law with respect to the crime for which Mr. Cadogan was charged, the Court found that the conviction was 'safe' and that there was ample evidence to support a finding by the jury that the appellant had the requisite intent to kill or cause serious bodily harm.⁵¹ The Court decided that there was 'no merit in the ground of appeal argued' and affirmed the trial court's judgment against Mr. Cadogan.⁵²

46. On June 13, 2006, counsel for Mr. Cadogan, Mr. Alair Shepherd and Mr. Tariq Khan at Inn Chambers in Barbados made arrangements for Mr. Cadogan to be evaluated by Dr. George E. Mahy, a consultant psychiatrist at the Belleville Medical Centre in Bridgetown. Dr. Mahy evaluated Mr. Cadogan on that same day and provided a preliminary written opinion based on a meeting with Mr. Cadogan in prison.⁵³ Dr. Mahy reported that "he was well oriented and denied ever having any features of a psychotic illness. He gave a history of someone who was very defiant in his childhood, aggressive in his adolescent period and a lifestyle of abusing alcohol and marijuana in late adolescence and adulthood. He described very heavy drinking of alcohol and equally heavy smoking of marijuana for hours before the event."⁵⁴ The report concluded that: "Given my assessment of his Personality Disorder, impulsive, aggressive and irrational behavior could easily be triggered off by mind-altering drugs. If he cannot honestly recollect these multiple stab wounds that he inflicted on Paulette Brathwaite, it raises doubt as to whether he intended to kill her."⁵⁵

⁴⁸ Appendix B.1, Supreme Court of Barbados (Criminal Division); Her Majesty the Queen v. Tyrone DaCosta Cadogan (18 May 2005); Appendix B.2, Criminal Appeal no. 16 of 2005, Supreme Court of Judicature Court of Appeal, p. 1.

⁴⁹ Appendix B 2, Criminal Appeal no. 16 of 2005, Supreme Court of Judicature Court of Appeal.

⁵⁰ Id., para 1.

⁵¹ Id., para 49.

⁵² Id., para 45-49.

⁵³ Appendix E.1, Petition, exhibit No 1, Dr. Mahy report (June 27, 2006).

⁵⁴ Id

⁵⁵ Id. The report listed the following specific conclusions:

1. He is not suffering from an acute mental disorder
2. There is nothing to suggest that he ever had an acute mental disorder prior to the index offence

47. Mr. Cadogan did not at anytime request the State to make available a psychiatric expert to conduct an evaluation of him in connection with his criminal trial.⁵⁶

48. On July 24, 2006, counsel for Mr. Cadogan, Mr. Alair Shepherd and Mr. Tariq Khan at Inn Chambers applied for special leave to appeal to the Caribbean Court of Justice, which was joined by an application for special leave to appeal as a poor person.⁵⁷ The grounds for appeal included: (1) the Court of Appeal was wrong in deciding that a direction about virtual certainty within the terms of the *Nedrick* and *Woollin* formulations ought not to have been given; (2) the trial judge failed to direct the jury on the defence of Diminished Responsibility and/or advise the Attorney at Law for the Applicant of that Defence⁵⁸; (3) the constitutional right of the accused to a fair trial was infringed upon, including not being provided with assistance of a medical expert; being deprived of effective assistance of an attorney at law and that his attorney was incompetent.

49. On appeal before the Caribbean Court of Justice, Mr. Cadogan's attorney submitted new evidence, a report produced by Dr. Mahy, consultant psychiatrist at Belleville Medical Centre, following a meeting with the Petitioners on June 13, 2006. The Court of Appeal evaluated Dr. Mahy's findings with respect to the criteria required for the

continuation

3. From the account he gave of himself he might have been diagnosed as suffering from Oppositional Defiant Disorder in Childhood if he were assessed at that time.
4. He might have also suffered from Conduct Disorder in Adolescence.
5. From the account he gives of his life style he has a major Personality Disorder with a strong psychopathic element.
6. He is also a poly-substance abuser viz. alcohol, cannabis and qualifies for a Dual Diagnosis of Anti-Social personality disorder and substance abuse.
7. He was heavily under the influence of alcohol and cannabis at the time of the offence.
8. If he genuinely cannot recall the multiple stab injuries that he allegedly inflicted on Paulette Brathwaite and that his only motive was to get money then his altered mental state is most likely related to substance abuse in an individual who already has a major personality disorder. This could take the form of Intoxication with high blood levels of alcohol and cannabis or a Drug Induced Psychotic Disorder.

⁵⁶ Appendix E.1, Petition, para 39.

⁵⁷ Appendix B.3, Notice of Application on behalf of Mr. Cadogan (Amended) to the Caribbean Court of Justice (July 21, 2006); See also Appendix B.4, Caribbean Court of Justice Appeal No AL 6 of 2006 (December 4, 2006).

⁵⁸ Appendix A 4, Section 4 (1) [defense of diminished responsibility] Offenses Against the Persons Act, 1994, Law of Barbados ("Where a person kills or is party to the 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 for any inherent cause or induced by disease or injury, as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing." Also, Section 4 (2) states that "on a charge of murder, it shall be for the defence to prove that the person is by virtue of this section not liable to be convicted of murder." In such cases, Section 4 (3) requires that the conviction be reduced to that of manslaughter instead of murder.")

diminished responsibility defense.⁵⁹ The Court also reviewed the jury instruction given at trial by Justice Chandler at the Supreme Court of Barbados. The Caribbean Court of Justice found that Dr. Mahy's report "would not afford any ground for allowing the appeal" as it was found to be "very weak material upon which to hope to establish a basis for a diminished responsibility plea" and that the report "falls short of the standard required for presenting an arguable case on abnormality of mind."⁶⁰ Mr. Cadogan's representatives admitted to the Court's observations and suggested a stay of the special leave to appeal until a definitive, psychiatric report could be obtained, while noting the difficulty in securing funds for such a report.⁶¹ On this point, the Court affirmed its finding of the weakness of the evidence and further stated that "the lack of public funding for making the services of an independent psychiatrist available to the Applicant has no significance, because we have no evidence that the free services provided by the Government-employed psychiatrist at the Psychiatric Hospital would be either biased or incompetent."⁶² The Court also found that the evidence was inadequate for alleging that counsel should have had the Applicant examined to see if there was any mental abnormality present.⁶³ The Court also determined that the jury was sufficiently instructed on the elements required for a murder conviction and the standard by which they should make their determination.⁶⁴ The Court also found that the Judge sufficiently instructed the jury on the elements that could bar a finding of murder, such as the lack of requisite criminal intent for murder or the lack of voluntary control over one's actions at the time the crime was committed. Finally, the Court considered the ground for appeal of incompetent counsel, and on the evidence before it, found that it had insufficient reliable evidence for a finding that the conduct of former counsel (Dr. Waldo Waldron-Ramsey) "led to a realistic possibility of a miscarriage of justice."⁶⁵

50. On December 4, 2006, the Caribbean Court of Justice dismissed the special leave to appeal, and by way of corollary, the joined application therein for special leave to appeal as a poor person was also dismissed.⁶⁶

51. According to the State, no warrants of execution have been issued against Mr. Cadogan pursuant to the Caribbean Court of Justice decision in the case of *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*. According to that decision "no warrant of execution can be issued [...] while either the Inter-American Commission or the

⁵⁹ Appendix B 4, Caribbean Court of Justice Appeal No AL 6 of 2006 (December 4, 2006), para 8-13.

⁶⁰ *Id.*, para 8-13.

⁶¹ *Id.*, para 10.

⁶² *Id.*, para 10,19.

⁶³ *Id.*, para 19.

⁶⁴ *Id.*, para 4, 5.

⁶⁵ *Id.*, para 16, 17 ("Indeed, it is the lack of reliable evidence, as to what went on between the Applicant and his former counsel and as to why the latter took the courses he did, that substantially undermines Mr. Shepherd's allegations.")

⁶⁶ Appendix B 4, Caribbean Court of Justice Appeal No AL 6 of 2006 (December 4, 2006).

I/A Court is processing the petition [...] the doctrine of legitimate expectations provide an individual the right to conclude his petition before the Inter-American Commission, to have the Commission's reports considered by the Barbados Privy Council and to have his execution stayed until those processes have been completed."⁶⁷ The State has not informed the Commission if Report N° 60/08 has been considered by the Barbados Privy Council.

VII. LEGAL ARGUMENTS

A. Preliminary considerations: Reservations made to the Convention by the State of Barbados

52. The State of Barbados issued reservations to select provisions of the American Convention at the time of its ratification on November 5, 1981⁶⁸. In the *Boyce et al. v. Barbados Case*, the State had 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"⁶⁹. 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"⁷⁰, 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"⁷¹ and as such, "a textual interpretation of the

⁶⁷ Appendix A.15, Attorney General et al. v- Jeffrey Joseph and Lennox Ricardo Boyce (2006) CC.J Appeal No. CV 2 of 2006, BB Civil Appeal No. 29 of 2004 (November 8, 2006).

⁶⁸ 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.

⁶⁹ I/A Court H R , *Boyce et al. v Barbados Case*, Judgment of November 20, 2007, Series C, N°169, para 14

⁷⁰ Id., para. 17 as taken from I/A Court H R., *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 Inter-American Court of Human Rights, *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.

⁷¹ I/A Court H R., *Boyce et al. v Barbados Case*, *supra* note 69 para. 17.

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"⁷². Therefore, the Commission does not consider that the reservations made by Barbados upon adoption of the Convention affects the Court's competence to analyze the *mandatory character* of the death penalty for the crime of murder in Barbados.

B. Articles 4(1), 4(2), 5(1), 5(2) and 8 of the Convention - Mandatory Application of the Death Penalty in conjunction with Article 1(1)

53. The record in this case indicates that Mr. Cadogan was convicted of murder and sentenced to death by hanging. Mr. Cadogan was convicted of murder under the *Offences Against the Person Act* as amended by the *Offences Against the Person Act* in 1994, Barbados, (hereinafter the "Act"), which prescribes the death penalty as the automatic and mandatory punishment for murder in the following terms: "Any person convicted of murder shall be sentenced to, and suffer, death."⁷³ Accordingly, once the jury found Mr. Cadogan guilty of murder, the death penalty was the prescribed punishment.

54. The crime of murder in Barbados can therefore be regarded as being subject to a "mandatory death penalty", namely a death sentence that the law compels the sentencing authority to impose based solely upon the category of crime for which the defendant is found responsible.⁷⁴ Accordingly, mitigating circumstances cannot be taken into account by a court in sentencing an individual to death.⁷⁵

55. The Commission considers that imposing the death penalty through mandatory sentencing is not compatible with Article 4 (right to life), Article 5 (right to humane treatment) and Article 8 (right to fair trial) of the American Convention and the principles underlying those provisions, as follows.

1. Articles 4(1), 4(2) of the Convention in conjunction with Article 1(1)

56. Article 4 of the American Convention provides as follows:

⁷² *Id.*, para. 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."

⁷³ Appendix A.4, *Offences against the Persons Act, 1994-18, Laws of Barbados*, s.2.

⁷⁴ I/A Court H R., *Boyce et al. v. Barbados Case*, *supra* note 69, para 49.

⁷⁵ *Id.*

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

57. In interpreting the issue of death penalty in general, the Court has observed that Article 4(2) of the Convention allows for the deprivation of the right to life by the imposition of the death penalty in those countries that have not abolished it.⁷⁶ That is, capital punishment is not *per se* incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.⁷⁷ First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.⁷⁸ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.⁷⁹ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must

⁷⁶ *Id.*, para 50.

⁷⁷ *Id.*, para. 50; *Cf. Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights)*, *supra* note 70.

⁷⁸ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 50; *Cf. Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 106, and *Case of Raxcacó Reyes, Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 70, para. 55.

⁷⁹ *Cf. I/A Court H.R. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 78, paras 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 78, para. 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 70, para. 55.

be strictly observed and reviewed.⁸⁰

58. Specifically, in addressing the issue of mandatory death sentencing in other cases, the Court has held that the reference to “arbitrary” in Article 4(1) of the Convention and the reference to “the most serious crimes” in Article 4(2) render the imposition of mandatory death sentences incompatible with such provisions where the same penalty is imposed for conduct that can be vastly different, and where it is not restricted to the most serious crimes.⁸¹

59. The provisions of the Convention regarding the imposition of the death penalty must be interpreted in view of the *pro persona* principle, that is to say, they should be interpreted in favor of the individual⁸² as “imposing restrictions designed to delimit strictly its application and scope, in order to reduce the application of the death penalty to bring about its gradual disappearance.”⁸³

60. It is also generally recognized that the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment. It is the absolute form of punishment that results in the forfeiture of the most valuable of rights, the right to life and, once implemented, is irrevocable and irreparable. In the Commission's view, the fact that the death penalty is an exceptional form of punishment must also be considered in interpreting Article 4 of the American Convention.⁸⁴

a. Limitation of the Application of the Death Penalty to the “most serious crimes”

⁸⁰ Cf. I/A Court H.R. *Case of Fermín Ramírez*, Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, para. 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 70, para. 55; *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. Series A No. 16, para. 135; *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago*, *supra* note 78, para 106; and *Case Raxcacó Reyes*, *supra* note 78, para 68.

⁸¹ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 51, 52; Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 78, paras. 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 78, paras 81 and 82.

⁸² I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 51, 52; Cf. *Case of the 19 Merchants V. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 173; *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 77, and *Case of the Massacre of Pueblo Bello V. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 59.

⁸³ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 51, 52; *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 78, para. 99, and *Case of Raxcacó Reyes*, *supra* note 78, para. 56. See also *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 70, para. 57.

⁸⁴ IACHR, *McKenzie et al., Jamaica*, Case 12.023 et al, Report No 41/00, April 13, 2000, Annual Report of the IACHR 1999, para 188.

61. The Convention reserves the most severe form of punishment for the most severe illicit acts.⁸⁵ Nevertheless, Section 2 of the Offences Against the Person Act simply states that where a person is found guilty of murder, that person shall be sentenced to death. Accordingly, the penalty for all crimes of murder in Barbados is the same, regardless of the individual circumstances of each case, the manner in which the murder is committed or the means employed.⁸⁶ That is, the Offences Against the Persons Act of Barbados fails to differentiate between intentional killings punishable by death, and intentional killings (not merely manslaughter or other lesser form of homicide)⁸⁷ that would not be punishable by death. Rather, the Offences Against the Person Act "compels the indiscriminate imposition of the same punishment for conduct that can be vastly different."⁸⁸

62. On this issue, the Court in *Boyce et al. v. Barbados* considered that Section 2 of the Offences Against the Person Act of Barbados does not confine the application of the death penalty to the most serious crimes, in contravention with Article 4(2) of the Convention.⁸⁹

b. Arbitrariness of the Mandatory Death Penalty

63. The mandatory death penalty cannot be reconciled with Article 4 of the Convention in another significant respect. As noted previously, the Inter-American Court has emphasized several restrictions upon the implementation of the death penalty that flow directly from the terms of Article 4 of the Convention. These include considerations relating to the nature of a particular offense as well as to factors concerning the circumstances of an individual offender. In this manner, Article 4 of the Convention itself presumes that before capital punishment may be lawfully imposed, there must be an opportunity to consider certain of the individual circumstances of an offender or an offense. By its very nature, however, mandatory sentencing imposes the death penalty for all crimes of murder and thereby precludes consideration of these or any other circumstances of a particular offender or offense in sentencing the individual to death.

64. Accepted principles of treaty interpretation indicate that sentencing individuals to the death penalty through mandatory sentencing and absent consideration of the individual circumstances of each offender and offense leads to the arbitrary deprivation

⁸⁵ Article 4(2), American Convention on Human Rights.

⁸⁶ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 54.

⁸⁷ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 54; Killings which otherwise would constitute murder in Barbados are subject to lesser punishments in the following areas: attempted murder, threatening murder through letters, conspiracy to murder, aiding suicide, acting in pursuance of a suicide pact and infanticide. *Cf. Offenses Against the Person Act*, Appendix A 4, ss. 2 and 9-14.

⁸⁸ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 54; *Cf. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 78, para. 103.

⁸⁹ I/A Court H R , *Case of Boyce et al v Barbados*, *supra* note 69, para 54, 55.

of life within the meaning of Article 4(1) of the Convention.⁹⁰ For its part, the Court has previously found that a lawfully sanctioned mandatory sentence of death may be arbitrary where the law fails to distinguish the possibility of different degrees of culpability of the offender and fails to individually consider the particular circumstances of the crime. On this point, the Court has specifically held that to consider all persons responsible for murder as deserving of the death penalty, "treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty."⁹¹

65. While the strict observation of certain due process rights and procedures are essential in evaluating whether the death penalty has been imposed arbitrarily,⁹² the Court has held that a distinction should be made between the sentencing stage and the availability and observance of such procedures during the whole proceedings of a capital case, including the appeals process. In accordance with the law in Barbados, the availability of statutory and common law defenses and exceptions for defendants in death penalty cases are relevant only for the determination of the guilt or innocence of the accused, not for the determination of the appropriate punishment that should be imposed once a person has been convicted. That is, a defendant in a capital punishment case may attempt to escape a guilty verdict by claiming certain common law defenses to a charge of murder.⁹³ These defenses seek to escape a conviction for murder and replace it with one for manslaughter, for example, which carries a sentence of life imprisonment, or even to totally exclude criminal liability for murder.⁹⁴ Nevertheless, if and when a defendant is found guilty of the crime of murder, the law does not allow the judge any latitude to consider the degree of culpability of the defendant or other forms of punishment that may be better suited for that particular person in light of all circumstances. That is, courts have

⁹⁰ IACHR, *McKenzie et al., Jamaica*, *supra* note 84, para 197.

⁹¹ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 57, 58; *Cf. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 78, para. 105, citing *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). The Supreme Court of the United States of America held that the mandatory death penalty constituted a violation of the due process guarantees of the Fourteenth Amendment and the right to not be subjected to cruel and unusual punishment of the Eighth Amendment of the Constitution of the United States of America. The Court also indicated that the imposition of the death penalty generally necessitates a consideration of the relevant facets of the character and record of the individual offender and the circumstances of the particular offence.

⁹² I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 59; In Advisory Opinion OC-16/99, the Court made it clear that when due process guarantees are affected the "imposition of the death penalty is a violation of the right not to be 'arbitrarily' deprived of one's life, in the terms of the relevant provisions of the human rights treaties (e.g. The American Convention on Human Rights, Article 4 [...]) with the juridical consequences inherent in a violation of this nature i.e., those pertaining to the international responsibility of the State and the duty to make reparations." *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, *supra* note 80, para. 137.

⁹³ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 59; *Cf. Offenses Against the Person Act*, (defining, for example, diminished responsibility and provocation), Appendix A 4, ss. 4 and 5

⁹⁴ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 59; *Cf. Offenses Against the Person Act*, Appendix A 4, s. 6.

no authority to individualize the sentence in conformity with information of the offence and the offender.⁹⁵

66. Contrary to the current practice in Barbados, the Commission considers that imposing the death penalty in a manner which conforms with Article 4 of the Convention requires an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is a permissible or appropriate form of punishment in the circumstances of their case. In the Commission's view, this includes, but is not limited to, representations and evidence as to whether any of the factors incorporated in Article 4 of the Convention may prohibit the imposition of the death penalty.

67. In this regard, a principle of law has developed common to those democratic jurisdictions that have retained the death penalty, according to which the death penalty should only be implemented through "individualized" sentencing.⁹⁶ Through this mechanism, the defendant is entitled to present submissions and evidence in respect of all potentially mitigating circumstances relating to his or her person or offense, and the court imposing sentence is afforded discretion to consider these factors in determining whether the death penalty is a permissible or appropriate punishment.⁹⁷

68. Mitigating factors may relate to the gravity of the particular offense or the degree of culpability of the particular offender, and may include such factors as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.

69. In the instant case, the victim was sentenced to death pursuant to section 2 of the Act, which prescribes the mandatory application of the death penalty for all those convicted of murder in Barbados. The Commission concludes that once Mr. Cadogan was found guilty, the law in Barbados did not permit a hearing by the courts as to whether the death penalty was a permissible or appropriate penalty in his case. There was no opportunity for the trial judge or the jury to consider such factors as the individual's character or record, the nature or gravity of the offense, or the subjective factors that may have motivated his conduct, in determining whether the death penalty was an appropriate form of punishment. Mr. Cadogan was likewise precluded from making representations on these matters. The courts sentenced the victim based solely upon the category of crime for which he had been found responsible.

70. The Commission recognizes that, had the courts been presented with evidence of mitigating factors and had they been permitted to consider this evidence in determining an appropriate sentence, they may well have still imposed the death penalty.

⁹⁵ I/A Court H R., *Case of Boyce et al v Barbados*, *supra* note 69, para 59.

⁹⁶ IACHR, *McKenzie et al., Jamaica*, *supra* note 84, para 208.

⁹⁷ *Id.*

The Commission cannot, and indeed should not, speculate as to what the outcome may have been. This determination properly falls to the domestic courts. What is crucial to the Commission's determination that Mr. Cadogan's sentence violates the Convention, however, is the fact that he was not given an opportunity to present evidence of mitigating factors, nor did the courts have discretion to consider evidence of this nature in determining whether the death penalty was an appropriate punishment in the circumstances of each case.⁹⁸

71. On this matter, the Inter-American Court of Human Rights previously held:

The Offences Against the Person Act [of Trinidad and Tobago] automatically and generically mandates the application of the death penalty for murder and disregards the fact that murder may have varying degrees of seriousness. Consequently, this Act prevents the judge from considering the basic circumstances in establishing the degree of culpability and individualizing the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different. In light of Article 4 of the American Convention, this is exceptionally grave, as it puts at risk the most cherished possession, namely human life, and is arbitrary according to the terms of Article 4(1) of the Convention.⁹⁹

The Court concurs with the view that to consider all persons responsible for murder as deserving of the death penalty, 'treats all persons convicted of a designated offence not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty.'¹⁰⁰

The Court concludes that because the Offences Against the Person Act submits all persons charged with murder to a judicial process in which the individual circumstances of the accused and the crime are not considered, the aforementioned Act violates the prohibition against arbitrary deprivation of life, in contravention of Article 4(1) and 4(2) of the Convention.¹⁰¹

72. The Court recently endorsed this finding in *Boyce et al v. Barbados* (2007) concluding that the Offences Against the Person Act of Barbados violates the prohibition against the arbitrary deprivation of life and fails to limit the application of the death penalty to the most serious crimes, in contravention of Article 4(1) and 4(2).¹⁰²

73. In sum, the mandatory application of the death penalty as prescribed in section 2 of the Act and as applied against Mr. Cadogan cannot be reconciled with Article 4(1) or 4(2) of the Convention in the following respects. Section 2 of the Offences Against the Person Act in Barbados lawfully sanctions the death penalty as the one and only

⁹⁸ Id., para 221-223

⁹⁹ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, supra note 78, para 103.

¹⁰⁰ Id., para 105.

¹⁰¹ Id., para 108.

¹⁰² I/A Court H.R., *Case of Boyce et al v. Barbados*, supra note 69, paras 54 and 55; 62 and 63

possible sentence for the crime of murder¹⁰³ and the law does not allow the imposition of a lesser sentence in consideration of the particular characteristics of the crime or the participation and degree of culpability of the defendant.¹⁰⁴ In line with the Court's reasoning on this matter in *Boyce et al. v. Barbados* and previous cases, the Commission considers that 'in the determination of punishment, [the Offences Against the Person Act] mechanically and generically imposes the death penalty for all persons found guilty of murder' in contravention of the prohibition of the arbitrary deprivation of the right to life recognized in Article 4(1) of the Convention, as it fails to individualize the sentence in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.¹⁰⁵ By its nature, then, this process eliminates a reasoned basis for sentencing a particular individual to death, and fails to allow for rational and proportionate connections between individual offenders, their offenses, and the punishment imposed on them in this manner.¹⁰⁶ The Commission concludes that because the Offences Against the Person Act submits all persons charged with murder to a judicial process in which the participation and degree of culpability of the accused and the individual circumstances of the crime are not considered, the aforementioned Act violates the prohibition against the arbitrary deprivation of life and fails to limit the application of the death penalty to the most serious crimes, in contravention of Article 4(1) and 4(2) of the Convention.¹⁰⁷

2. Articles 5(1) and 5(2) in connection with Article 1(1)

74. Article 5 – Right to Humane Treatment:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

¹⁰³ As explained by the I/A Court H.R. in the *Case of Boyce et al v. Barbados*, *supra* note 69:

The definition of murder is not provided in any written law, as it remains a common law offence, and it is understood that "[m]urder is committed where a person of sound mind and the age of discretion unlawfully kills any reasonable creature in being under the Queen's peace with malice aforethought either expressed by that person or implied by law, so that the party wounded or hurt dies of that wound or hurt within a year and a day of same." Moreover, a person who "aids, abets, counsels, procures or incites another to commit [murder] is guilty of [such] offence and may be proceeded against and punished as a principal offender."

¹⁰⁴ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 57; IACHR, *McKenzie et al., Jamaica*, *supra* note 84, para 196

¹⁰⁵ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 61.

¹⁰⁶ IACHR, *McKenzie et al., Jamaica*, *supra* note 84, para 196

¹⁰⁷ I/A Court H.R., *Case of Boyce et al v. Barbados*, *supra* note 69, para 62.

3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

75. Article 5(1) guarantees to each person the right to have his or her physical, mental, and moral integrity respected, and Article 5(2) requires all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person. These guarantees presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in circumstances in which a State Party proposes to limit or restrict the most basic of the rights and freedoms of an individual.¹⁰⁸ In the Commission's view, consideration of respect for the inherent dignity and value of individuals is especially crucial when determining whether a person should be deprived of his or her right to life.

76. The mandatory imposition of the death penalty, however, has both the intent and the effect of depriving a person of their right to life based solely upon the category of crime for which the offender is found guilty, without regard for the offender's personal circumstances or the circumstances of the particular offense.¹⁰⁹ In sum, the Commission cannot reconcile the essential respect for the dignity of the individual that underlies Article 5(1) and 5(2) of the Convention, with a system that deprives an individual of the most fundamental of rights without considering whether this exceptional form of punishment is appropriate in the circumstances of the individual's case.¹¹⁰ In sum, the Commission finds that the treatment of Mr. Cadogan in this manner abrogates the fundamental respect for humanity that underlies his right to be protected under Article 5(1) and (2) of the Convention.

3. Article 8 in connection with Article 1(1) of the Convention

77. The Commission considers that mandatory death sentences cannot be reconciled with an offender's right to due process, as provided for in Article 8 of the

¹⁰⁸ IACHR, *McKenzie et al., Jamaica, supra* note 84, para 202.

¹⁰⁹ IACHR, *McKenzie et al., Jamaica, supra* note 84, para 202-203.

¹¹⁰ I/A Court H.R., *Case of Boyce et al v Barbados, supra* note 69, para 64; IACHR, *McKenzie et al., Jamaica, supra* note 84, para 202-203.

Convention.¹¹¹ It is well-established that proceedings leading to the imposition of capital punishment must conform to the highest standards of due process. The due process standards governing accusations of a criminal nature against an individual are prescribed in Articles 8(1) and 8(2) of the Convention, and include the right to a hearing before a competent, independent and impartial tribunal, the right of the accused to defend himself or herself, personally or by counsel, and the right to appeal the judgment to a higher court. In addition, as noted previously, Article 4 of the Convention provides that the death penalty should be imposed only for the most serious offenses, and contemplates that certain factors attributable to a particular offender or offense may bar the imposition of the death penalty altogether in the circumstances of a particular case.

78. In the Commission's view, therefore, the due process guarantees under Article 8 of the Convention, when read in conjunction with the requirements of Article 4 of the Convention, presuppose as part of an individual's defense to a capital charge an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of his or her case. This may be on the basis, for example, that the crime for which they have been convicted should be considered a political or related common crime within the meaning of the Convention. The due process guarantees should also be interpreted to include a right of effective review or appeal from a determination that the death penalty is an appropriate sentence in a given case.

79. Furthermore, by reason of its compulsory nature, a mandatory death sentence precludes any effective review by a higher court as to the propriety of a sentence of death in the circumstances of a particular case. As indicated previously, once a mandatory sentence is imposed, all that remains for a higher court to review is whether the defendant was properly found guilty of a crime for which the sentence was mandated. There is no opportunity for a reviewing tribunal to consider whether the death penalty was an appropriate punishment in the circumstances of the particular offense or offender. This consequence cannot be reconciled with the fundamental principles of due process under Articles 4 and 8 of the Convention that govern the imposition of the death penalty.¹¹² The absence of effective review further illustrates the arbitrary nature of implementing the death penalty through mandatory sentencing, and leads the Commission to further conclude that this practice cannot be reconciled with the terms of Article 8 of the Convention and its underlying principles.

4. Prerogative of Mercy

¹¹¹ I/A Court H R , *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago*, supra note 78; IACHR, *Baptiste v. Granada*, Case 11.743, Report No. 38/00, Adopted April 13, 2000, Annual Report 1999; IACHR, *McKenzie et al., Jamaica*, supra note 84; IACHR, *Michael Edwards et al. v. The Bahamas*, Case 12.067 et al., Report No. 48/01, Adopted April 21, 2001, Annual Report 2000

¹¹² IACHR, *Edwards et al v. The Bahamas*, supra note 111, para. 143.

80. The Court has observed that Article 4 of the American Convention is based on the principle that the death penalty should be applied only for the most serious crimes and in exceptional circumstances, and grants to those sentenced to death the additional right to seek amnesty, pardon or commutation of sentence before the competent authority.

81. Article 1(1) of the Convention establishes the State's duty to respect and guarantee the exercise of the rights protected therein and Article 4(6) states that:

[e]very person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

82. On this point, Section 78 of the Constitution of Barbados grants authority to the Governor-General of Barbados to commute a death sentence pursuant to executive discretion to exercise the prerogative of mercy. Accordingly, individuals in the position of Mr. Cadogan, who is sentenced to death, is entitled to have his case considered by the Barbados Privy Council and the Governor-General of Barbados in exercise of the prerogative of mercy under the Constitution of Barbados.¹¹³ According to this provision, the Barbados Privy Council is responsible for considering and making recommendations to the Governor-General of Barbados as to whether an offender sentenced to death should benefit from the Governor-General's discretionary power to exercise the prerogative of mercy.¹¹⁴ However, the Commission is not aware of any prescribed criteria that are applied in the exercise of the functions or discretion that are to be applied in the exercise of the discretion of the Privy Council or the Governor-General.¹¹⁵

83. In such cases, the Court has found that the individual mercy petitions provided for in the Constitution should be exercised through fair and adequate procedures, in conformity with Article 4(6) of the Convention¹¹⁶ and in conjunction with the relevant due process guarantees established in Article 8. In other words, it is not enough merely to be able to submit a petition; rather, the petition must be treated in accordance with procedural standards that make this right effective.

84. The Commission deems that although a violation of Article 4(6) of the Convention was not specifically alleged by Petitioners, the Commission is not prevented

¹¹³ Appendix A.1, Constitution of Barbados, s. 78.

¹¹⁴ *Id.*

¹¹⁵ Appendix A.2, Constitution of Barbados (Amendment) Act, 2002, 2002-14 (29 August 2002), s. 4.

¹¹⁶ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago*, *supra* note 78, para. 186; IACHR, *Baptiste v. Granada*, *supra* note 111; IACHR, *McKenzie et al., Jamaica*, *supra* note 84; IACHR, *Edwards et. al. v. The Bahamas*, *supra* note 111, para. 170.

from examining the issue by virtue of the aforementioned general legal principle of *iura novit curia*.¹¹⁷

85. Article 4(6) of the American Convention, when read together with Articles 8 and 1(1), places the State under the obligation to guarantee that an offender sentenced to death may effectively exercise this right.¹¹⁸ Accordingly, the State has a duty to implement a fair and transparent procedure by which an offender sentenced to death may make use of all favorable evidence deemed relevant to the granting of mercy.

86. The process in Barbados is not consistent with the standards prescribed under the Convention, those which are applicable to the imposition of mandatory death sentences.¹¹⁹ These standards include legislative or judicially prescribed principles and standards to guide courts in determining the propriety of death penalties in individual cases, and an effective right of appeal or judicial review in respect of the sentence imposed. The Prerogative of Mercy process in Barbados clearly does not satisfy these standards.

87. In light of the foregoing analysis, the Commission considers that imposing the death penalty through mandatory sentencing, as Barbados has done in respect of the crime of murder is not consistent with the terms of Article 4(1), 4(2), 5(1), 5(2) and 8 in connection with Article 1(1) of the Convention.

88. Therefore, the Commission requests the Court to declare that the State violated to the detriment of Mr. Cadogan Articles 4, 5 and 8 of the American Convention on Human Rights in conjunction with Article 1(1) of the same treaty.

C. Incompatibility of Section 2 of the Offences Against the Person Act 1994 and Section 26 of the Constitution of Barbados with Article 2 of the American Convention

89. The Commission submits before the Court that both section 2 of the Offences Against the Person Act 1994 of Barbados and section 26 of the Constitution of Barbados are incompatible with the State's obligations under Article 2 of the American Convention, insofar as these legislative provisions fail to comply with or give effect to the rights and freedoms protected under the Constitution of Barbados and the American Convention on Human Rights.

90. Article 2 of the American Convention provides as follows:

¹¹⁷ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago*, *supra* note 78, para 187; *Cf.* I/A Court H.R., *Durand and Ugarte Case, Merits. Judgment of August 16, 2000. Series C No. 68*, para. 76; I/A Court H.R., *Castillo Petruzzi et al. Case, Reparations and Costs. Judgment of November 27, 1998. Series C No. 43*, para. 166; and I/A Court H.R., *Godínez Cruz Case, Merits. Judgment of January 20, 1989. Series C No. 5*, para. 172.

¹¹⁸ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago*, *supra* note 78, para 188.

¹¹⁹ IACHR, *Edwards et al. v. The Bahamas*, *supra* note 111, para 168

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms

91. This Court has consistently held that Article 2 of the American Convention establishes the general obligation of States Parties to bring their domestic law into compliance with the norms of the Convention, in order to guarantee the rights set out therein. According to the Court, the provisions of domestic law that are adopted must be effective (principle of *effet utile*), in that the State has the obligation to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice.¹²⁰

92. The Court has also held that if the States, pursuant to Article 2 of the American Convention, have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognised in the Convention, it also follows that they must refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them, as such acts would likewise constitute a violation of Article 2 of the Convention.¹²¹

93. As indicated above, section 2 of the Offences Against the Person Act 1994¹²² prescribes the death penalty as the automatic and mandatory punishment for murder in the following terms: "Any person convicted of murder shall be sentenced to, and suffer death."¹²³ The Court has held that this legislative provision in Barbados is incompatible with Articles 4, 5 and 8 of the American Convention, in conjunction with Article 1(1) of the Convention.¹²⁴

94. The Court has held that the failure of Barbados to amend or invalidate section 2 of the Offences Against the Person Act so as to bring its laws into compliance with the American Convention in itself constitutes a *per se* violation of Article 2 of the Convention.

¹²⁰ I/A Court H.R., "The Last Temptation of Christ" Case (*Olmedo Bustos et al.*). Judgment of February 5, 2001 Series C No. 73, para. 87; *Hilaire, Constantine and Benjamin et al.*, supra note 78, paras 112, 113.

¹²¹ See I/A Court H.R., *Suárez Rosero Case*, Merits. Judgment of November 12, 1997. Series C No. 35, para. 98; I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, para. 42; *Hilaire, Constantine and Benjamin et al.*, supra note 78, paras 114, 115.

¹²² Appendix A 4, Offences Against the Person Act 1994-18, Laws of Barbados.

¹²³ *Id.*, s 2.

¹²⁴ I/A Court H.R., *Case of Boyce et al v. Barbados*, supra note 69, para 74.

95. In this regard, the Court held in the context of the mandatory death penalty under the Offences Against the Person Act of Trinidad and Tobago that this legislation could be held to be inconsistent with Article 2 of the American Convention even though most of the victims in that case had not been executed pursuant to that law. According to the Court:

even though thirty-one of the alleged victims in this case have not yet been executed, it is appropriate to find that there has been a violation of Article 2 of the Convention, by virtue of the fact that the mere existence of the *Offences Against the Person Act* in itself constitutes a *per se* violation of that provision of the Convention. This assertion is consistent with Advisory Opinion OC-14/94, which states that, "[i]n the case of self-executing laws, [...] the violation of human rights, whether individual or collective, occurs upon their promulgation."¹²⁵

96. The Commission therefore contends that, by virtue of the fact that Barbados has not brought section 2 of its Offences Against the Person Act 1994 into compliance with the Convention, it has not fulfilled the obligation imposed on States Parties by Article 2.

97. The Commission submits that similar arguments apply to section 26 of the Constitution of Barbados. Section 26 of the Constitution of Barbados prevents the courts in that country from declaring certain laws to be inconsistent with the fundamental rights prescribed under sections 12 to 23 of the Constitution, in the following terms:

26. 1. Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question.
 - a. is a law (in this section referred to as "an existing law") that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day;
 - b. repeals and re-enacts an existing law without alteration; or
 - c. alters an existing law and does not thereby render that law inconsistent with any provision of sections 12 to 23 in a manner in which, or to an extent to which, it was not previously so inconsistent.
2. In subsection (1)(c) the reference to altering and existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in subsection (1) "written law" includes any instrument having the force of law and in this

¹²⁵ I/A Court H.R., *Hilaire, Constantine and Benjamin et al Case*, supra note 78, para. 116, citing *Suárez Rosero Case*, supra note 121, para. 98; I/A Court H.R., *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights) Advisory Opinion OC-14/94 of December 9, 1994 Series A No. 14, para. 43.

subsection and subsection (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.¹²⁶

98. Section 26 is referred to as a "Savings Clause", because it immunizes pre-constitution laws from constitutional challenge even if those laws are inconsistent with fundamental rights and freedoms enshrined in the constitution. Similar provisions are contained in the constitutions of other Commonwealth Caribbean countries, including the Constitution of the Republic of Trinidad and Tobago,¹²⁷ the terms of which this Court considered in the *Hilaire, Constantine and Benjamin et al.* Case, as discussed below.

99. Also as indicated previously, a majority of the Judicial Committee of the Privy Council has held that section 26 of the Constitution of Barbados precludes domestic courts from holding the mandatory death penalty to be inconsistent with the fundamental rights and freedoms under section 11 to 23 of the Constitution, including the right under section 15 not to be subjected to torture or to inhuman or degrading punishment or other treatment.¹²⁸ The Privy Council reached this conclusion notwithstanding the fact that it had previously held, and continues to hold, that the existence of the mandatory death penalty is not consistent with a current interpretation of the right to humane treatment under section 15 of the Constitution of Barbados. In effect, then, section 26 of the

¹²⁶ Appendix A1, Constitution of Barbados, s. 26.

¹²⁷ Appendix A5, Constitution of Trinidad and Tobago 1976, section 6, providing as follows:

6. - 1. Nothing in sections 4 and 5 shall invalidate

- a. an existing law;
- b. an enactment that repeals and re-enacts an existing law without alteration; or
- c. an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.

2. Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right.

3. In this section

"alters" in relation to an existing law, includes repealing that law and re-enacting it with modifications or making different provisions in place of it or modifying it;

"existing law" means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of this Constitutions, and includes any enactment referred to in subsection (1);

"right" includes freedom

¹²⁸ See Appendix A.16, *Lennox Boyce & Jeffrey Joseph v. The Queen (Barbados)* [2004] UKPC 32, Privy Council Appeal No 99 of 2002, Judgment of July 7, 2004 (JCPC). at paras. 1-6.

Constitution of Barbados permits the State to maintain and apply legislation that is manifestly contrary to the rights under the Constitution of Barbados and the American Convention.

100. To date the Caribbean Court of Justice has yet to address this matter.

101. In this context, the Commission considers that section 26 of the Constitution of Barbados is incompatible with the obligation of State Parties under Article 2 of the Convention to give domestic legal effect to the rights protected under the Convention. In particular, to the extent that the mandatory death penalty prescribed under section 2 of the Offences Against the Person Act of Barbados is found to violate the rights of the victim in the present case under Articles 4, 5 and 8 of the American Convention, Barbados, as a State party to the American Convention, is obliged under Article 2 of the Convention to adopt such legislative or other measures as may be necessary to amend or derogate that law so as to give effect to the fundamental rights under the Convention. Section 26 of the Constitution of Barbados, however, has the opposite effect, by specifically and expressly preventing "existing laws" including section 2 of the Offences against the Person Act from being declared incompatible with such rights.

102. In this regard, the Court previously held in the *Case of Hilaire, Constantine and Benjamin et al v. Trinidad and Tobago* that the Savings Clause in the 1976 Constitution of Trinidad and Tobago (together with Trinidad & Tobago's Offences Against the Person Act) violated Article 2 of the Convention. Specifically, the Court found that:

[...] Section 6 of the Constitution of the Republic of Trinidad and Tobago of 1976 establishes that no law in effect prior to the date the Constitution entered into force may be the object of constitutional challenge under Sections 4 and 5 (supra para. 84(f)). The Offences Against the Person Act is incompatible with the American Convention and thus any provision that establishes that Act's immunity from challenge is likewise incompatible, by virtue of the fact that Trinidad and Tobago, as a party to the Convention at the time that the acts took place, cannot invoke provisions of its domestic law as justification for failure to comply with its international obligations.¹²⁹

103. The Inter-American Court on Human Rights previously found that the American Convention establishes the general obligation of State Parties to bring their domestic law into compliance with the norms of the Convention, in order to guarantee the rights set out therein.¹³⁰ The provisions of the domestic law that are adopted must be effective. That is to say that the State has the obligation to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice. States therefore must also refrain both from promulgating laws that disregard or impede the free exercise of

¹²⁹ I/A Court H.R., *Hilaire, Constantine and Benjamin et al Case*, supra note 78, para 152.

¹³⁰ Id , para 112-113. Cf. I/A Court H.R., *Case of Boyce et al. v. Barbados*, supra note 69, para 69

these rights, and from suppressing or modifying the existing laws protecting them. These acts would likewise constitute a violation of Article 2 of the Convention.¹³¹

104. Finally, in the Case of Boyce, the Court considered that, but for the existence of section 2 of Offences Against the Person Act, Mr. Cadogan would not have had his right to life infringed. Section 2 of Offences Against the Person Act is thus a law that impedes the exercise of the right not to be arbitrarily deprived of life, and as such, is *per se*¹³² contrary to the Convention and the State has a duty to eliminate or modify it pursuant to Article 2 of such instrument.

105. The Commission considers that to the extent that section 26 of the Constitution of Barbados prevents judicial scrutiny over section 2 of the Offences Against the Person Act, which in turn violates Articles 4, 5 and 8 of the Convention, the State has failed to abide by its obligations under Article 2 of the Convention, in relation to Articles 1(1), 4(1), 4(2) of this instrument.¹³³

106. Based upon the above submissions, the Commission requests the Court to declare that the State has failed to fulfill its obligations under Article 2 of the Convention in relation to section 2 of the Offences Against the Person Act 1994 as well as section 26 of the Constitution of Barbados.

VIII. REPARATIONS AND COSTS

107. In this section of the application the Commission presents its arguments to the Court concerning the reparations and costs that the State of Barbados must grant as a consequence of its responsibility for the violations to human rights of Mr. Cadogan.

108. Bearing in mind that according to the international law of human rights, those individuals who have the right to reparations are the victims and their families, and in attention to the provisions of the Rules of the Court which grant autonomous representation to the individual, the Commission will only develop general criteria on the subject of reparations and costs that should be applied by the Court in this case. The Commission understands that the victim will elaborate upon their requests in conformity with Article 63 of the Convention and Articles 23 and related of Court Rules of Procedure.

¹³¹ I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*, *supra* note 78, para 112-113.

¹³² I/A Court H.R., *Case of Boyce et al. v. Barbados*, *supra* note 69, para 72; The Court has held on previous occasions that a law may *per se* violate the American Convention. *Cf. Case of Suárez*, *supra* note 121, para. 98; *Case of La Cantuta, Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162*, paras. 167 and 174, and *Case of Almonacid Arellano et al, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006 Series C No 154*, para. 119. See also *Certain Attributes of the Inter-American Commission on Human Rights* (Arts 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights) Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26, and *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, paras. 41-43.

¹³³ I/A Court H.R., *Case of Boyce et al. v. Barbados*, *supra* note 69, para 75, 79,80

A. Obligation to repair and measures of reparation

109. Article 63(1) of the American Convention establishes that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

110. As indicated by the Court in its jurisprudence:

Article 63(1) of the American Convention contains a consuetudinary rule that constitutes one of the fundamental principles of contemporary international law with respect to the responsibilities of different States. Thus, when an illicit action imputable to a State takes place, the international responsibility of said State arises immediately due to its violation of an international rule and the corresponding consequences, requiring the reparation and interruption of the consequences of the violation.¹³⁴

111. The Court also has indicated that the "reparation of damages due to the violation of an international obligation requires, when possible, the full restitution (*restitutio in integrum*), which consists in reestablishing the situation to the state it was in before the violation."¹³⁵ If that is not possible, the Court must "order that a series of measures be adopted so that in addition to guaranteeing that the violated rights will be respected in the future, the consequences produced by the violations may be repaired and a restitution payment be effected to compensate damages corresponding to case in question."¹³⁶ In this respect, the Court has stated that reparation measures tend to make the effects of violations disappear.¹³⁷ Said measures include the different means by which a State can fulfill its international responsibilities, which consist of restitution, compensation, rehabilitation, satisfaction and measures for non-repetition.¹³⁸

¹³⁴ I/A Court H.R., *Mack Chang Case*, Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 142; *Bulacio Case*, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 71; *Juan Humberto Sánchez Case*, Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 148; *Five Pensioners Case*, Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 174, and *Cantos Case*, Merits, Reparations and Costs. Judgment of November 28, 2002. Series C No. 97, para. 67, among others.

¹³⁵ I/A Court H.R., *Hilaire Case, Constantine and Benjamin and others vs. Trinidad and Tobago*, supra note 78, para. 203; see also *Constitutional Court Case (Aguirre Roca, Rey Terry and Revoredo Marsano vs. Perú)*, Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 119.

¹³⁶ *Id.*

¹³⁷ I/A Court H.R., *Street Children Case*, Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 63.

¹³⁸ See report by Theo Van Boven, Special Spokesman of the United Nations for Restitution, Compensation and Rehabilitation of Victims of Grave Violations of Human Rights and Fundamental Freedoms. UN Doc. E/CN.4/Sub2/1990/10 (July 25, 1990).

112. In this respect, the Commission requests the Court to order the State of Barbados to immediately adopt all the measures required to end the violations of the human rights of Mr. Cadogan that are specified in the present application, commuting his death sentence.

113. Jurisprudence of the Court in those cases in which the existence of a violation of Article 2 of the American Convention has been determined indicates that one of the measures of reparation relating to the guarantee of non-repetition is the modification or integral reform of the legislation in question.

114. Considering the above, the Commission requests the Court to order, as guarantees of non-repetition, that the State adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention in Barbados, and to adopt such legislative or other measures as may be necessary to ensure that the Constitution and the Offences Against the Person Act of Barbados conforms with Article 2 of the American Convention, that is to say, to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice.

B. Beneficiary

115. Article 63(1) of the American Convention demands the reparation of the consequences of a violation and that fair compensation be paid to the injured party. Individuals having the right to said compensation are generally those who have been directly injured by the violation in question.

116. According to the nature of the present case, the beneficiary of the reparations that the Court may order as a result of the violations to human rights perpetrated by the State of Barbados is the victim himself, Mr. Cadogan.

C. Costs and expenses

117. In conformity with the established jurisprudence of the Court, costs and expenses must be understood as included in the concept of reparations set out in Article 63 (1) of the American Convention, since the activities undertaken by the victim, his representatives or beneficiaries in order to pursue international remedies imply expenses and monetary commitments that must be compensated.¹³⁹ In addition, the Court has understood that the costs to which Article 56(1)(h) of the Rules of Procedure of the Court refer to necessary and reasonable expenses in which the victim incur in order to accede to

¹³⁹ I/A Court H.R., *Mack Chang Case*, *supra* note 134, para. 290; *Maritza Urrutia Case*, Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, para 182 and *Bulacio Case*, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 150.

the organs of supervision of the American Convention, fees of individuals providing legal counsel included.

118. The Commission notes that the lawyers of the victims in the present case have emphasized that they do not seek any legal fees in relation to this application since they conduct the case on a *pro bono* basis. They do request expenses to be recovered from the State.¹⁴⁰ Consequently, the Commission requests the Court to consider the submissions of the victim's representatives in determining what order for costs and expenses may be appropriate.

IX. CONCLUSIONS

119. Based on the previous analysis, the Inter-American Commission requests the Court to conclude and declare that the State of Barbados:

- a) By imposing the mandatory death penalty on Mr. Tyrone DaCosta Cadogan violated Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of the same treaty; and
- b) Has not fulfilled its obligations under Article 2 of the American Convention on Human Rights in relation to section 2 of the Offences Against the Person Act 1994 of Barbados and section 26 of the Constitution of Barbados because it has not brought its domestic legislation into compliance with the rights and freedoms protected under the American Convention.

X. DEMANDS

120. The Inter-American Commission requests that the Court order the State of Barbados to:

1. Grant Mr. Cadogan the commutation of his death sentence;
2. Adopt such legislative or other measures as may be necessary to safeguard against any imposition of the death penalty not in conformity with the terms of Articles 4, 5 and 8 of the American Convention; and
3. Adopt, within a reasonable time, such legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and specifically, remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws".

¹⁴⁰ See Appendix E.17, Petitioners, Communication of September 12, 2008.

XI. EVIDENCE

121. The Inter-American Commission offers the following supporting evidence:

A. Documentary Evidence (List of Appendixes)

Appendix A	Legislation and Jurisprudence
A.1	Constitution of Barbados
A.2	Constitution (Amendment) Act 2002-14 of Barbados
A.3	Constitution (Amendment) Act 2003-10 of Barbados
A.4	Offences Against the Person Act 1994-18, Laws of Barbados
A.5	Constitution of Trinidad and Tobago, Enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act (Ch. 1:01).
A.6	Trinidad and Tobago Offences Against the Person Act, (3 April 1925), Laws of Trinidad and Tobago, Ch. 11:08.
A.7	Neville Lewis et al. v. The Attorney General of Jamaica and The Superintendent of St. Catherine District Prison, Privy Council Appeals Nos. 60 of 1999, 65 of 1999, 69 of 1999 and 10 of 2000 (12 September 2000)(J.C.P.C.)
A.8	Criminal Procedure Act of Barbados
A.9	Caribbean Court of Justice Act, 2003-9 of Barbados
A.10	Caribbean Court of Justice, Barbados Rediffusion Services Ltd. v. Astra Mirchandani et al., CCJ Appeal No. CV 1 of 1005, BB Civil Appeal No. 18 of 2000
A.11	Agreement Establishing the Caribbean Court of Justice
A.12	2001 Revised Treaty of Chaguaramas
A.13	Patrick Reyes v. The Queen, Privy Council Appeal No. 64 of 2001, Judgment of March 11, 2002 (JCPC)
A.14	Community Legal Services Act, CAP.112.A
A.15	Attorney General et al. v- Jeffrey Joseph and Lennox Ricardo Boyce (2006) CCJ Appeal No. CV 2 of 2006, BB Civil Appeal No. 29 of 2004 (November 8, 2006)
A.16	Lennox Boyce & Jeffrey Joseph v. The Queen (Barbados) [2004] UKPC 32, Privy Council Appeal No. 99 of 2002, Judgment of July 7, 2004 (JCPC). at paras. 1-6.
Appendix B	Domestic proceedings regarding the victim
B.1	Tyrone DaCosta Cadogan - Record of the proceedings (1-226) - Supreme Court of Barbados (Criminal Division) - Her Majesty the Queen v. Tyrone DaCosta Cadogan (May 18, 2005)
B.2	Criminal Appeal No. 16 of 2005, Supreme Court of Judicature Court of Appeal (May 31, 2006) between Tyrone DaCosta Cadogan and The Queen.
B.3	Notice of Application on behalf of Mr. Cadogan (Amended) to the

	Caribbean Court of Justice (July 21, 2006)
B.4	Caribbean Court of Justice Appeal No AL 6 of 2006 (December 4, 2006)
Appendix C	Powers of attorney
Appendix D	Inter-American Commission on Human Rights' Reports
D.1	IACHR, Report N° 60/08, Tyrone DaCosta Cadogan, Barbados, adopted July 25, 2008
D.2	IACHR, Admissibility Report N° 7/08, adopted March 4, 2008.
Appendix E	Copy of the file of the proceedings at the Inter-American Commission on Human Rights
E.1	Petition, December 29, 2006.
E.2	IACHR, Communication of January 3, 2007.
E.3	IACHR, Communication of January 23, 2007 and State, communications of March 21 and October 25, 2007.
E.4	IACHR, Communication of January 14, 2008.
E.5	IACHR, Communication of January 18, 2008.
E.6	Petitioners, Communication of February 18, 2008 and IACHR, Communication of February 22, 2008.
E.7	IACHR, Communication of March 24, 2008.
E.8	Petitioners, Communications of April 24, 30 and May 2, 2008.
E.9	IACHR, Communication of May 5, 2008.
E.10	Petitioners, Communication of May 30, 2008 and IACHR's Response of June 3, 2008.
E.11	Petitioners, Communication of May 23, 2008 and IACHR, Communication of June 5, 2008.
E.12	State of Barbados, Communication of July 4, 2008. See also IACHR, Communication of July 8, 2008.
E.13	State of Barbados, Communication of July 9, 2008 and IACHR, Communication of July 10, 2008.
E.14	IACHR, Communication dated July 31, 2008 and transmitted on August 1, 2008.
E.15	IACHR, Communications dated August 15, 2008.
E.16	Petitioners, Communication of August 15, 2008 and IACHR, Communication dated August 27, 2008.
E.17	Petitioners, Communication of September 12, 2008 and IACHR, Communication of September 18, 2008.
E.18	State of Barbados, Communications of August 14, 2008 and October 3, 2008.
E.19	IACHR, Communication of October 17, 2008.

B. Testimonial Evidence

122. The Commission presents the following witness:

1. **Mr. Tyrone DaCosta Cadogan**, victim of the case. The Commission offers this witness to refer on the process that lead to and the consequences of the imposition of the mandatory death penalty.

XII. DATA ON THE ORIGINAL COMPLAINANTS, THE VICTIM AND THEIR FAMILY MEMBERS

123. Finally, according to the provision of Article 33 of the Rules of Procedure of the Court, the Inter-American Commission informs the Court that Mr. Cadogan has granted a power of attorney to Messrs. [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Washington, D.C.
October 31, 2008

¹⁷⁹ See Appendix C, powers of attorney.