
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 33/2018**

Precautionary Measures No. 1047-17

Dwayne Omar Severin and Jabari Sensimania Nervais regarding Barbados
May 5, 2018

I. INTRODUCTION

1. On November 13, 2017, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a handwritten request for precautionary measures presented by Dwayne Omar Severin and Jabari Sensimania Nervais (hereinafter “the applicants” or “the proposed beneficiaries”¹), urging the IACHR to request that the State of Barbados (hereinafter “the State” or “Barbados”) adopt precautionary measures to protect their right to life and personal integrity. According to the request the proposed beneficiaries are in the prison “Her Majesty’s Prisons, Dodds, St. Philip,” having been convicted and sentenced to the mandatory imposition of the death penalty by hanging, and are currently on death row. The request is related to petition 2457-17 alleging violations of the American Convention on Human Rights and other international instruments.

2. The Commission requested information from the State on March 8, 2018. The State responded on April 4 and 6, 2018.

3. After analyzing the legal and factual allegations presented, as well as their specific context, the Commission considers that Messrs. Dwayne Omar Severin and Jabari Sensimania Nervais are *prima facie* in a serious and urgent situation, since their rights to life and personal integrity are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the State of Barbados: a) Refrain from carrying out the death penalty on Messrs Dwayne Omar Severin and Jabari Sensimania Nervais until the IACHR has ruled on their petition; b) Adopt the necessary measures to preserve the lives and personal integrity of Messrs. Dwayne Omar Severin and Jabari Sensimania Nervais, especially considering the impact that death row is allegedly causing to their personal integrity, which may include transferring the proposed beneficiaries to another detention center that meets the corresponding international standards; and c) Agree upon the measures to be adopted with the beneficiaries and their representatives.

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

1. Information provided by the applicants

4. With regard to Mr. Jabari S. Nervais, the request indicates that he was arrested on August 22nd, 2007, for a murder in November of the previous year. On February 21st, 2012, he was found guilty and sentenced to death by hanging. The proposed beneficiary appealed that decision, and the appeal was dismissed on May 17th, 2017. In relation to Mr. Dwayne Omar Severin, he was detained on December 9th, 2009 for a murder that occurred on November 30th, 2009. On May 24th, 2014, the proposed beneficiary was found guilty and sentenced to death. The proposed beneficiary appealed that decision, and the appeal was dismissed on May 17th, 2017.

¹ The request arrived by postal mail sent by the “Barbados Prison Service” of “Her Majesty’s Prisons Dodds” to which the communication of the proposed beneficiaries was attached. The date of the communication sent by the prison is October 17, 2017.

5. In the case of both proposed beneficiaries, they expressed their desire to appeal to the Caribbean Court of Justice on June 27th, 2017. According to the request, both applicants are awaiting the decision of the Caribbean Court of Justice. The petitioners indicated that if the decision of the Caribbean Court of Justice is unfavorable, their next step would be to resort to the IACHR. The applicants did not provide information on the object and scope of the appeal before the Caribbean Court of Justice or whether it implies the suspension of the sentence. The applicants indicated that they have appealed to the judicial authorities but the adverse decisions were confirmed. According to the applicants, due process was not respected.

6. Finally, the applicants indicated that their rights are violated by the mandatory sentence of death for crimes of murder and also for the psychological, physical and emotional abuse of "keeping them for more than 5 years in an environment where the death threat is constant."

2. Response from the State

7. The State reported that the proposed beneficiaries were arrested and prosecuted separately for homicide. Mr. Nervais was convicted on February 21st, 2012, and Mr. Severin, on May 28th, 2014. Both of them were sentenced to death by hanging according to "Section 2 of the Offenses against the Person Act, Chapter 141 of the Laws of Barbados." The proposed beneficiaries appealed their sentences on May 17th, 2017, and the appeals were dismissed by the Court of Appeals of Barbados.

8. The proposed beneficiaries filed applications for leave to appeal to the Caribbean Court of Justice against the conviction and sentence. The request was granted and on January 23rd and 24th, 2018 the appeals were presented. They await a decision of the Caribbean Court of Justice.

9. The State considered that the decision taken by the Caribbean Court of Justice "will no doubt be illuminating." The State also stressed that the death penalty has not been enforced in Barbados for some time, without specifying exact dates. It indicated that the death penalty continues to remain in effect despite constitutional challenges, without specifying the challenges or timeline. The State did not indicate that it would refrain from applying the death penalty.

10. With regard to the conditions of detention of the proposed beneficiaries, the State indicated that they comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. In that sense, the State provided a list of characteristics of the cell in which the proposed beneficiaries are housed,² the conditions and services that they have access to,³ and the contact they have with the outside world.⁴

11. The State indicated that Mr. Severin is on death row since May 28th, 2014, and Mr. Nervais, since February 21st, 2012.

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

12. The Precautionary Measures Mechanism is part of the IACHR's function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of the American States. These general oversight functions are established in Article 41 (b)

² Length of the cell (16 ft., 7 in.) width of the cell (7 ft., 1 in.) toilet, two windows, one door, drinking water, bed, mattress, sheets, and adequate lighting and ventilation.

³ Access to medical services (in prison and national) access to dental services, access to psychiatric services, location based on classification (preventive detention, convicted, high risk, juvenile) adequate housing, clothing, and bedding, access to exercise, and freedom of religion.

⁴ Visits, letters, telephone, books, and controlled radio.

of the American Convention on Human Rights, as well as in Article 18 (b) of the Statute of the Inter-American Human Rights and in Article 25 of the Rules of Procedure of the Commission, related to the Precautionary Measures Mechanism. According to this Article, the IACHR grants precautionary measures in urgent and serious situations, and when these measures are necessary to avoid an irreparable damage to persons.

13. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter “the Inter-American Court” or “IAHR Court”) have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective aspect, these measures seek to avoid irreparable damage and to protect the exercise of human rights. Regarding their precautionary aspect, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary aspect aims to safeguard the rights at risk until the petition in the Inter-American System is resolved. The object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits, and thus avoid any further infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures make it possible for the State concerned to comply with a final decision on a petition and, if necessary, implement any ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

14. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.⁵

15. As a preliminary observation, the Commission considers it pertinent to clarify that it is not responsible for ruling on the criminal responsibility of the proposed beneficiaries, nor may it rule on the conventionality of the criminal process in which the proposed beneficiaries are involved through the mechanism of precautionary measures. In the present proceedings, the Commission will only analyze compliance with the requirements of Article 25 of the Rules of Procedure of the IACHR which can be evaluated without having to go into the merits of the matter.

16. Based on information provided by the parties, the Commission identifies that Messrs. Nervais and Severin were sentenced to death by hanging in 2012 and 2014, respectively, and are currently held at “Her Majesty’s Prisons, Dodds, St. Philip,” on death row for 6 and 3 years, respectively.

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

⁵In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACHR, Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

18. In this regard, the Commission first notes that the proposed beneficiaries filed a petition (P-2457-17) alleging violations of the American Convention, among other aspects, in view of the imposition of death penalty as the mandatory sentence in cases of murder.

19. With regard to this aspect, the Commission recalls that in the matters *Boyce, 2007* and *DaCosta Cadogan, 2009* both regarding Barbados, first the IACHR and then the Inter-American Court determined that the application of the "mandatory death penalty" in domestic legislation for the crime of homicide as established in Section 2 of the LDCP⁶ violated the American Convention. Accordingly, in these cases the Inter-American Court ordered that Article 26 of the Barbados Constitution of 1966 regarding the immunity of "existing laws,"⁷ which prevented the questioning of previous legislation like the LDCP of 1868,⁸ be eliminated or modified. The Commission observes that in 2011, during the supervision of these cases, the State reported to the Inter-American Court on the creation of a "Committee" to study the necessary legislative changes,⁹ and according to public information, the last time a death sentence was implemented in Barbados was in 1984.¹⁰ However, the Commission does not have information indicating that the death penalty has indeed been repealed. In fact, the Commission notes that the State indicated that the mandatory death penalty is still in effect.

20. Secondly, the Commission notes that the applicant has indicated that the proposed beneficiaries have been on death row for 3 and 6 years, and that the long wait has affected them psychologically, emotionally and physically. In relation to this aspect, the Commission notes that the "death row phenomenon" has been widely known for the impacts it generates on the rights to life and integrity of persons deprived of their liberty. In this regard, the European Court determined in *Soering vs. United Kingdom* that this phenomenon is constituted by a prolonged period of detention awaiting and prior to execution, during which mental distress is suffered, in addition to other circumstances to which the accused is exposed.¹¹ In addition, the Commission recently published Merits report No. 24/17, on the situation of an Argentine citizen who was sentenced in the United States to death and remained on death row for more than twenty years. The Commission found that⁶ bin the circumstances of the specific case this constituted a form of torture, inhuman treatment and a cruel, infamous and unusual punishment.¹²

21. In view of the aforementioned, taking into account the impact that the death row would have on

⁶Specifically in the *DaCosta Cadogan* case, recalling the precedent of the *Boyce* case, the Inter-American Court indicated that "with respect to Section 2 of the LDCP, which indicates that 'any person convicted of the crime of homicide will be sentenced, and will suffer, the death penalty'" the Court stated in *Boyce* and others that this law prevents the exercise of the right not to be arbitrarily deprived of life and as such is per se contrary to the Convention, therefore the State has the duty to eliminate or modify it in accordance with article 2 of that instrument. I/A Court H.R. Case of *DaCosta Cadogan v. Barbados*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 24, 2009. Series C No. 204, para. 70; and IHR Court. Case *Boyce et al. v. Barbados*. Supervision Compliance Judgment. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 10. Available in: http://www.corteidh.or.cr/docs/supervisiones/boyce_21_11_11.pdf (In Spanish).

⁷ I/AHR Court. Case *Boyce et al. v. Barbados*. Preliminary Objection, Fund, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, operative paragraph 8; and IHR Court. Case of *Dacosta Cadogan v. Barbados*, Op. Cit., Ninth operative paragraph.

⁸As indicated by the I/A Court HR, "[i]n effect, Article 26 does not allow the challenge of those laws in force, prior to the constitution, with the purpose of reviewing its constitutionality even when the purpose of said review is to analyze if the law violates rights and fundamental freedoms. This is the case of Article 2 of the LDCP, which came into force at the time of the enactment of the Offenses against the Person Act of 1868. That is, Article 2 of the LDCP is a law prior to the current constitution, and continues law in Barbados. Therefore, under the "exclusion clause", the constitutionality of Article 2 of the LDCP cannot be challenged internally." I/A Court H.R. Case *Boyce et al. v. Barbados*, Op. Cit., Para. 75

⁹I/AHR Court. Case of *Dacosta Cadogan v. Barbados*. Supervision Compliance Judgment. Order of the Inter-American Court of Human Rights of November 21, 2011, para. 10 and 13.

¹⁰Amnesty International, "Caribbean: Death penalty in the English-speaking Caribbean: A Human Rights issue," November 30, 2012, available at <https://www.amnesty.org/en/documents/amr05/001/2012/en/>; Cornell Center on the Death Penalty Worldwide, "Death penalty database: Barbados", latest updates as of December 20, 2017, available at: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Barbados#a1-2>

¹¹IACHR. *The Death Penalty in the Inter-American Human Rights System: Abolition, Restrictions*. OEA / Ser.L / V / II. Doc. 68. December 31, 2011, page 200. Available at: <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

¹²IACHR, Report No. 24/17, Case 12.254. Background. Victor Saldaño. U.S. March 18, 2017, para. 252. Available in: <http://www.oas.org/en/iachr/decisions/merits.asp>

the rights of the proposed beneficiaries, as well as the effect that execution would have on their rights to life and personal integrity, making a future pronouncement of the Commission ineffective, the Commission concludes that Messrs. Nervais and Severin rights are *prima facie* in a situation of grave risk.

22. Regarding the requirement of urgency, the Commission considers that it has been complied with given that, according to the information presented by the applicants, if the Caribbean Court of Justice decides in an unfavorable manner, the execution of the proposed beneficiaries would be imminent. As the State has indicated, the proposed beneficiaries questioned their conviction and sentence before the Caribbean Court of Justice. Understanding that this Court serves as the "highest court of appeals," having replaced the Judicial Committee of the Privy Council in 2005, the Commission considers that in the event of an unfavorable result there would be no other instance before which the decision could be appealed within the domestic system. The Commission notes that, years ago the Judicial Committee of the Privy Council "stated that if it were not for the exclusion clause [established in the Constitution of Barbados], it would have declared that the mandatory death penalty goes against the constitutional right not to be subjected to a cruel, inhuman and degrading punishment."¹³ Additionally, the Commission takes into account when determining the urgency of the situation the impact that the continuing time on death row has on the proposed beneficiaries in the circumstances previously described.

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

IV. BENEFICIARIES

24. The Inter-American Commission declares as beneficiaries Dwayne Omar Severin and Jabari Sensimania Nervais, who are duly identified in the present proceedings.

V. DECISION

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

- a) Refrain from executing the death penalty imposed on Messrs. Dwayne Omar Severin and Jabari Sensimania Nervais until the IACHR has ruled on their petition;
- b) Adopt the necessary measures to preserve the lives and personal integrity of Messrs. Dwayne Omar Severin and Jabari Sensimania Nervais, especially due to the impact that death row would have on their personal integrity, which may include transferring the

¹³ In addition, according to the Inter-American Court: "This supposed limitation of the right to judicial protection was addressed in 2004 by the highest court of appeal in Barbados at the time, the Judicial Committee of the Privy Council (hereinafter, "JCPC") which held in *Boyce and Joseph v. The Queen* that the domestic courts could not declare that Article 2 of the LDCP is inconsistent with Article 15.1 of the Constitution of Barbados, which prohibits inhuman or degrading treatment, given that the LDCP is an "existing law" according to the meaning of article 26 of the Constitution." See: IACHR Court, *Boyce et al. V. Barbados*, op. Cit., Para. 76. In the instant case, the Inter-American Court also indicated that "it coincides with the reasoning of the Judicial Committee of the Privy Council that a fundamental right is at stake, namely, the right not to be arbitrarily deprived of life." See: *Case Boyce et al. V. Barbados*, op. Cit., Footnote 73.

proposed beneficiaries to another detention center that meets the corresponding international standards; and

c) Agree upon the measures to be adopted with the beneficiaries and their representatives.

26. The Commission also requests that the Government of Barbados to inform the Commission within a period of 15 days, as from the date of notification of the present resolution, regarding the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

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

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

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

Paulo Abrão
Executive Secretary