

DaCosta Cadogan v. Barbados

ABSTRACT¹

On May 18, 2005, the Supreme Court of Barbados found Mr. Tyrone DaCosta Cadogan guilty of murder and sentenced him to death by hanging; a sentence that is in accordance with Barbados's Offences Against the Persons Act of 1994. Barbados imposed this mandatory death penalty sentence without considering the specific circumstances of the crime or the mitigating factors. As a consequence of a savings clause in the Constitution of Barbados, the domestic courts could not declare the mandatory death sentence to be invalid even though it violated fundamental rights protected under Barbados's Constitution and the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

December 8, 2003: Around 6:30 a.m., Mr. Tyrone DaCosta Cadogan begins drinking rum.² Mr. DaCosta Cadogan drinks about four bottles of alcohol and smokes two marijuana cigarettes with his friends.³ Mr. DaCosta Cadogan has run out of money, so he forms a plan to rob someone to buy more liquor and marijuana.⁴

Late that night, nineteen-year old Ms. Paulette Brathwaite walks home from her job.⁵ On a narrow road, she is attacked and stabbed seventeen times with a twenty-two centimeter butcher knife.⁶ Police officers hear Ms. Brathwaite calling out for help and stop their patrol

1. Sarah Frost, Author; Jennifer Barrera, Elise Cossart-Daly, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *DaCosta Cadogan and The Queen*, Criminal Appeal No. 16 of 2005, ¶ 7 (Supreme Court of Judicature Mar. 2, 2006 and May 31, 2006) (Barb.).

3. *Id.* ¶ 12.

4. *Id.*

5. *Id.* ¶ 4.

6. *Id.*

car.⁷ She collapses in the back seat of their car.⁸ Shortly thereafter she is dead.⁹

December 9, 2003: Police officers find Mr. DaCosta Cadogan at the Church of the Nazarene and invite him to accompany them to the Criminal Investigations Department.¹⁰ Mr. DaCosta Cadogan goes voluntarily and is informed of his rights.¹¹ In an oral statement, Mr. DaCosta Cadogan confesses to killing Ms. Brathwaite.¹²

December 10, 2003: Mr. DaCosta Cadogan directs investigators to a tree where a butcher knife is hidden.¹³ He also directs them to his home, where he has left the clothes he wore on December 8.¹⁴

May 18, 2005: The Supreme Court of Barbados finds Mr. DaCosta Cadogan guilty of murder.¹⁵ Pursuant to Barbados' *Offenses Against the Person Act* of 1994, which mandates a death penalty sentence for the crime of murder, it sentences him to death by hanging.¹⁶ Mr. DaCosta Cadogan is subsequently detained as a prisoner on death row in Barbados.¹⁷

May 31, 2006: The Court of Appeal of Barbados affirms the decision of the Supreme Court of Barbados.¹⁸

July 24, 2006: Mr. DaCosta Cadogan files an application for special leave to appeal to the Caribbean Court of Justice, a regional international court that is the last instance of jurisdiction for several

7. *Id.* ¶ 5.

8. *Id.*

9. *Id.*

10. *Id.* ¶ 6.

11. *Id.*

12. *Id.* ¶ 7.

13. *Id.* ¶ 8.

14. *Id.*

15. DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 204, ¶ 2 (Sep. 24, 2009).

16. *Id.*

17. DaCosta Cadogan v. Barbados, Admissibility Report, Report No. 7/08, Inter-Am. Comm'n H.R., Case 12.645, ¶ 1 (Mar. 4, 2008).

18. *Id.* ¶ 2.

Caribbean states.¹⁹ He later files for special leave to appeal as an indigent person.²⁰

December 4, 2006: The Caribbean Court of Justice dismisses Mr. DaCosta Cadogan's application for special leave to appeal and special leave to appeal as an indigent person.²¹

B. Other Relevant Facts

The Constitution of Barbados contains a "savings clause," which exempts from constitutional review laws enacted before the constitution came into force on November 30, 1966.²² Section 2 of the *Offenses Against the Person Act* was enacted before the Constitution came into force and mandates the imposition of the death penalty for any person convicted of murder.²³ Since Section 2 is exempt from constitutional review because of the "savings clause," domestic courts in Barbados are incapable of declaring mandatory death sentences invalid.²⁴

II. PROCEDURAL HISTORY

A. Before the Commission

December 29, 2006: Alair P. Shepherd Q.C. and M. Tariq Khan present a petition on behalf of Mr. DaCosta Cadogan to the Inter-American Commission on Human Rights.²⁵

March 4, 2008: The Commission adopts Report on Admissibility No. 7/08.²⁶ The State does not question the admissibility of the petition.²⁷ The State also does not respond to the facts alleged in the petition.²⁸

19. *Id.*

20. *Id.*

21. *Id.* See also *DaCosta Cadogan v. The Queen*, [2006] CCJ 4 (A) (Caribbean Ct. J. Dec. 4, 2006).

22. *Boyce et al. v. Barbados*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169, ¶ 75 (Nov. 20, 2007).

23. *Id.* ¶¶ 71, 75.

24. *DaCosta Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

25. *Id.* ¶ 1.

26. *Id.*

27. *DaCosta Cadogan v. Barbados*, Admissibility Report, Report No. 7/08, Inter-Am. Comm'n H.R., Case 12.645, ¶ 19 (Mar. 4, 2008).

28. *Id.*

July 25, 2008: The Commission adopts Merits Report No. 60/08.²⁹ The Commission finds the violation of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 4(2) (Limitations on Death Penalty) of the American Convention on Human Rights because the State has imposed the death penalty on Mr. DaCosta Cadogan without considering the specific circumstances of his crime or any mitigating factors.³⁰ The Commission finds that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) because the mandatory imposition of the death penalty deprives an individual of fundamental rights without considering whether the punishment is appropriate given the circumstances of the case.³¹ Because the mandatory death sentence precludes effective review by higher courts, the Commission also finds the violation of Article 8 (Right to a Fair Trial).³² Lastly, the Commission finds that the State failed to meet its obligations under Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention because Section 26 of the Barbados Constitution works to prevent judicial review of Section 2 of the *Offenses Against the Person Act*.³³ The Commission requests commutation of Mr. DaCosta Cadogan's death sentence.³⁴ The Commission also recommends that the State adopt measures to ensure non-repetition of the death penalty being imposed in violation of the rights guaranteed under the American Convention.³⁵ Since the lawyers representing Mr. DaCosta Cadogan conducted the case on a *pro bono* basis, the Commission requests that the Court require that the State repay the costs and expenses incurred by counsel on behalf of the petitioner.³⁶

29. DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

30. *Id.* ¶ 2.

31. DaCosta Cadogan v. Barbados, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.645, ¶ 76 (2008).

32. *Id.* ¶ 79.

33. *Id.* ¶ 105.

34. *Id.* ¶ 120.

35. *Id.* ¶ 114.

36. DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, ¶ 118.

B. Before the Court

October 29, 2008: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁷

1. Violations Alleged by Commission

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 4(2) (Limitations on Death Penalty)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment)

Article 8 (Right to a Fair Trial)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.³⁸

2. Violations Alleged by Representatives of the Victims³⁹

Same Violations Alleged by Commission, plus:

Article 8 (Right to a Fair Trial)⁴⁰ of the American Convention.

November 4, 2008: The President of the Court issues an Order that requires the State to adopt urgent measures of protection to preserve the life and physical integrity of Mr. DaCosta Cadogan.⁴¹

January 30, 2009: The State appoints the Justice John Connell as Judge *ad hoc*.⁴²

37. *Id.* ¶ 1.

38. *Id.* ¶ 2.

39. *Id.* ¶ 3. Saul Lehrfreund M.B.E., Parvais Jabbar, Alair Shepherd Q.C., Douglas Mendes S.C., Tariq Khan, Ruth Brander, and Alison Gerry served as representatives of Mr. DaCosta Cadogan.

40. *Id.* Arguing that the State also violated Article 8 (Right to a Fair Trial) of the American Convention by failing to cause a “comprehensive psychiatric examination” to be conducted. The Article 8 violation was “cruel and inhuman,” violating Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhuman, and Degrading Treatment) thereof.

41. *Id.* ¶ 125.

42. *Id.* ¶ 7.

March 17, 2009: The State submits preliminary objections to the admissibility of the petition and the lack of jurisdiction of the Court, arguing that the petitioners did not exhaust domestic remedies; there is a breach of the fourth instance rule; and that the complaint no longer involves the Commission as a party because the State has taken steps to abolish the mandatory death penalty.⁴³

September 24, 2009: The Court unanimously dismisses the preliminary objections of the State.⁴⁴ Regarding the alleged lack of exhaustion of domestic remedies, the Court finds that an objection to the Court's exercise of jurisdiction that is based on lack of exhaustion of remedies should have been raised at the appropriate procedural stage.⁴⁵ Since the State did not submit its first communication to the Commission until after the Admissibility Report was adopted, the State has lost the possibility of raising the defense of lack of exhaustion of remedies.⁴⁶

Regarding breach of the fourth instance rule, the Court finds the Commission's application to the Court does not seek to review the judgments of the domestic courts or the Caribbean Court of Justice.⁴⁷ Instead, the application seeks a pronouncement that the State violated several principles of the American Convention, including the right to a fair trial and the right to life.⁴⁸ On numerous occasions, the Court has examined domestic proceedings to establish their compatibility with the American Convention.⁴⁹ Because such an examination is "directly linked to the merits of the controversy," the Court may examine claims relating to an alleged victim's diminished responsibility for a crime and the adequacy of legal counsel without contravening the fourth instance rule.⁵⁰

Regarding the State's objection that the complaint no longer involves the Commission as a party, the Court recognizes that the State has expressed a willingness to comply with the judgment of the Court in

43. *Id.* ¶ 4.

44. *Id.* ¶¶ 18-20.

45. *Id.*

46. *Id.*

47. *Id.* ¶ 24.

48. *Id.*

49. *Id.*

50. *Id.* ¶ 25. The "fourth instance rule" is a critique of international jurisprudence whereby international courts are used as a "fourth instance" of domestic appeal. Thus, an allegation that pleads that the domestic court's decision was merely wrong or unjust should be dismissed. *See also id.* ¶ 21.

Boyce et al. v. Barbados,⁵¹ which would provide similar reparations to those sought in the present case.⁵² The Court notes, however, that the willingness to domestically redress an unlawful act does not prevent the Commission or Court from hearing a case.⁵³ Rather, jurisdiction arises where a State “fails to fully comply with its obligation to remedy a violation of rights recognized under the American Convention.”⁵⁴ The State’s willingness to redress violations of Mr. DaCosta Cadogan’s rights, though relevant to the Court’s analysis of the merits and the reparations it may order, does not revoke the Court’s jurisdiction over the case.⁵⁵

III. MERITS

A. Composition of the Court

Cecilia Medina Quiroga, President
Diego García Sayán, Vice-President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
John A. Connell, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

September 24, 2009: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁵⁶

The Court found unanimously that Barbados had violated:

51. *Id.* ¶ 29.

52. See *Boyce et al. v. Barbados*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169 (Nov. 20, 2007).

53. *DaCosta Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations, and Costs ¶ 30.

54. *Id.*

55. *Id.*

56. *DaCosta Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations, and Costs.

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 4(2) (Limitations on Death Penalty), in relation to Article 1(1) of the Convention, to the detriment of Mr. DaCosta Cadogan,⁵⁷ because:

The deprivation of the right to life by the imposition of capital punishment, though not prohibited by the Convention, is subject to strict limitations.⁵⁸ Capital punishment must be limited to the most serious crimes that are not related to political offenses, must be individualized to account for the particular characteristics of the crime, and its imposition must be subject to procedural guarantees.⁵⁹

Article 4(2) (Limitations on Death Penalty) of the Convention reserves capital punishment “only for the most serious crimes.”⁶⁰ Section 2 of the Offenses Against the Person Act contravenes the Convention because it requires the indiscriminate application of the death penalty as punishment for conduct that can vary tremendously.⁶¹ The imposition of a mandatory death sentence on Mr. DaCosta Cadogan therefore violated his right to life.⁶²

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention provides that no one may be “arbitrarily deprived of his life.”⁶³ In Barbados, the purpose of statutory and common law defenses and exceptions available to defendants in death penalty cases is to defend the innocence of the defendant, not to determine the appropriate punishment once the defendant has been convicted.⁶⁴ Though defendants have the right to apply to the executive branch for amnesty, pardon, or commutation of sentence,⁶⁵ courts still have a responsibility to impose the most appropriate punishment for particular crimes.⁶⁶

Since the Offenses Against the Person Act “mechanically and generically imposes the death penalty on all persons found guilty of

57. *Id.* ¶¶ 46-59.

58. *Id.* ¶ 47.

59. *Id.*

60. *Id.* at n.18.

61. *Id.* ¶ 51.

62. *Id.* ¶ 52.

63. *Id.* at n.17.

64. *Id.* ¶ 55.

65. *Id.* ¶ 56.

66. *Id.* ¶¶ 56-57.

murder,” the Court found that it contravened the Convention’s provision that no one may be arbitrarily deprived of life.⁶⁷

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Articles 1(1) (Obligation to Respect Rights), 4(1) (Prohibition of Arbitrary Deprivation of Life), 4(2) (Limitations on Death Penalty), and 25(1) (Right of Recourse Before a Competent Court) of the Convention, to the detriment of Mr. DaCosta Cadogan,⁶⁸ because:

The “savings clause” in Section 26 of the Barbados Constitution prevents judicial scrutiny over Section 2 of the Offenses Against the Person Act.⁶⁹ The Court found that Section 2 of the Offenses Against the Person Act was contrary to the Convention because it “impedes the exercise of the right not to be arbitrarily deprived of life.”⁷⁰ The Court found that the State therefore violated the right not to be arbitrarily deprived of life.⁷¹

To the extent that the State affirmed its commitment to modify its domestic legislation in order to comply with the Court’s judgment in Boyce et. al. v. Barbados, the Court found that international responsibility nonetheless arose when the State applied its legislation to Mr. DaCosta Cadogan.⁷²

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), and 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), in relation to Articles 1(1) and 4(1) of the Convention, to the detriment of Mr. DaCosta Cadogan,⁷³ because:

The Court considered that, while a full psychiatric evaluation is available for free to all criminal defendants in the State at the request of the defendant or the judge, the judge is not obligated to request an

67. *Id.* ¶ 57.

68. *Id.* ¶¶ 68-75.

69. *Id.* ¶ 73.

70. *Id.* ¶ 70.

71. *Id.* ¶¶ 68-75.

72. *Id.* ¶ 74.

73. *Id.* ¶¶ 76-90.

evaluation if he or she does not deem it necessary.⁷⁴ The judge is furthermore not obligated to inform a defendant that an evaluation is available.⁷⁵

Mr. DaCosta Cadogan underwent a basic psychiatric evaluation to determine whether he was fit to plead.⁷⁶ But he did not receive a full evaluation during his trial, and his request upon appeal that the Caribbean Court of Justice allow submission of a full psychiatric report was denied.⁷⁷ The Court noted that an evaluation of Mr. DaCosta Cadogan's mental health during his criminal trial could have allowed Mr. DaCosta Cadogan to raise a defense of diminished responsibility.⁷⁸

Given the strict procedural requirements the State was obliged to observe due to the possibility of a mandatorily-imposed death sentence, the Court found the State violated Mr. DaCosta's right to a fair trial.⁷⁹

The Court found unanimously that Barbados had not violated:

Articles 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. DaCosta Cadogan,⁸⁰ because:

The Court found the allegation that the mandatory imposition of the death penalty violated Article 5 (Right to Humane Treatment) of the Convention, more properly fell under Article 4 (Right to Life) of the Convention, which the Court had already discussed.⁸¹

Although Mr. DaCosta Cadogan's representatives alleged that he suffered from a mental illness, the Court found that they did not prove that Mr. DaCosta Cadogan had a mental illness.⁸²

Article 8(2)(e) (Right to Assistance by Counsel Provided by State), in relation to Articles 1(1) (Obligation to Respect Rights) and

74. *Id.* ¶ 80.

75. *Id.*

76. *Id.* ¶ 79.

77. *Id.* ¶ 81.

78. *Id.* ¶ 87.

79. *Id.* ¶ 90.

80. *Id.* ¶¶ 61-62.

81. *Id.* ¶ 61.

82. *Id.* ¶ 62.

4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention, to the detriment of Mr. DaCosta Cadogan,⁸³ because:

*The State-appointed defense counsel's failure to pursue a defense of diminished responsibility did not constitute gross incompetence or effectively deny Mr. DaCosta Cadogan the right to assistance of counsel.*⁸⁴

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed dual requirements of Article 4 (Right to Life) of the American Convention.⁸⁵ In addition to the requirement that domestic courts restrict capital punishment to the most serious offenses, courts must also characterize the unlawful conduct appropriately.⁸⁶ One aspect of achieving an appropriate characterization of unlawful conduct is to ensure that the accused has received “the most thorough defense,” in light of the nature of the offense and the particular circumstances of the accused.⁸⁷

Since the law in Barbados excludes the imposition of the death penalty in cases in which the accused is found to have suffered from mental health problems or other circumstances such as drug or alcohol addiction, the State is responsible for ensuring its courts consider these mitigating circumstances.⁸⁸ Therefore, the duty to guarantee the human rights of the accused does not rest solely with defense counsel.⁸⁹ Rather, the tribunal is responsible for determining not only whether the accused has the mental capacity to stand trial, but also whether the possibility of excluding the death penalty has been exhausted.⁹⁰ In light of the grave possibility of the imposition of the death penalty, a request for a psychiatric examination by the tribunal helps guarantee that the appropriate punishment will be administered.⁹¹

83. *Id.* ¶ 93.

84. *Id.*

85. DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, Separate Concurring Opinion of Judge Sergio García-Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 204, ¶ 2 (Sep. 24, 2009).

86. *Id.*

87. *Id.* ¶ 11.

88. *Id.* ¶¶ 12-13.

89. *Id.* ¶ 15.

90. *Id.*

91. *Id.* ¶¶ 14-18.

Judge García Ramírez praised the “promising signs on the horizon” of domestic legislation on capital punishment.⁹² He maintained that capital punishment should be totally and definitively abolished, contemplating that “the day must come when universal consensus ... establishes the prohibition of capital punishment within the framework of *jus cogens*.”⁹³

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The court indicated that the Judgment itself should be understood as a form of reparation.⁹⁴ The Judgment served as a “measure of satisfaction” that recognized the State violated Mr. DaCosta Cadogan’s rights.⁹⁵

2. Reform Legislation

The Court noted the State’s willingness to comply with the court’s judgment in *Boyce, et al. v. Barbados*, but nonetheless ordered the State to adopt any legislative or other measures necessary to ensure that the imposition of the death penalty does not violate the rights and freedoms guaranteed under the American Convention.⁹⁶ The State must also ensure the death penalty is not imposed through mandatory sentencing.⁹⁷

The court ordered the State to adopt legislative or other measures to bring the Constitution and laws of Barbados into compliance with the American Convention.⁹⁸

92. *Id.* ¶ 5.

93. *Id.*

94. *DaCosta Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 204, ¶ 100 (Sep. 24, 2009).

95. *Id.*

96. *Id.* ¶ 104.

97. *Id.*

98. *Id.*

The court also ordered the State to inform all persons accused of a crime who might be subject to the mandatory death penalty, at the beginning of the criminal proceedings against them, of their right to obtain a psychiatric evaluation carried out by a state-employed psychiatrist.⁹⁹

3. Set Aside the Death Penalty

The State must set aside the death sentence imposed on Mr. DaCosta Cadogan and provide a hearing for the judicial determination of an appropriate sentence in his case, taking into considering the characteristics of the crime and Mr. DaCosta Cadogan's participation and degree of culpability.¹⁰⁰ The State must not impose a death sentence on Mr. DaCosta Cadogan under the new legislative measures.¹⁰¹

B. Compensation

The court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The court awarded \$18,000 for the costs and expenses related to the Mr. DaCosta Cadogan's present case, including future expenses related to the monitoring of compliance with the Judgment.¹⁰² The amount is to be paid directly to Mr. DaCosta Cadogan's legal representatives.¹⁰³

4. Total Compensation (including Costs and Expenses ordered):

\$18,000

99. *Id.* ¶ 105.

100. *Id.* ¶ 109.

101. *Id.* ¶ 110.

102. *Id.* ¶ 121.

103. *Id.*

C. Deadlines

The State must adopt legislative reforms to bring the Barbados Constitution into compliance with the American Convention within a reasonable amount of time of the date of notification of the Judgment.¹⁰⁴

The State must pay the costs and expenses within one year of the notification of the Judgment.¹⁰⁵

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

September 7, 2010: The representatives of Mr. DaCosta Cadogan received payment of \$17,975 from the State.¹⁰⁶ The Court found that the State complied with its order to pay costs and expenses to Mr. DaCosta Cadogan's representatives.¹⁰⁷

October 14, 2010: The State intended to bring its Constitution and laws into compliance with the Convention by repealing Section 26 of the Constitution.¹⁰⁸ On October 14, the State's "Committee to Study the Ramifications of Repealing Section 26 of the Constitution" ("the Committee") convened to consider three draft bills to bring about the repeal of the mandatory death penalty.¹⁰⁹

The Court noted the State's willingness to abolish the mandatory death penalty, but found that its orders were still pending compliance.¹¹⁰ The Court requested a report on the status of the draft bills and a copy of the bills.¹¹¹ The Court also requested a report on the status of the process initiated by the State for the purpose of repealing Section 26.¹¹²

104. *Id.* ¶ 104.

105. *Id.* ¶ 121.

106. *Boyce et. al. v. Barbados and DaCosta Cadogan v. Barbados, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶¶ 38-41 (Nov. 21, 2011).*

107. *Id.* "Considering That" ¶ 41.

108. *Id.* "Considering That" ¶ 10.

109. *Id.*

110. *Id.* "Considering That" ¶ 17.

111. *Id.* "Considering That" ¶ 13.

112. *Id.* "Considering That" ¶ 17.

October 2, 2011: Attorney General of Barbados Adriel Brathwaite remarked that Barbados would abolish the mandatory death penalty before the end of the year.¹¹³ He stressed, however, that the death penalty would remain as a possible punishment for murder.¹¹⁴ Mr. Brathwaite urged for greater emphasis on social policies that would prevent at-risk youth from turning to crime.¹¹⁵

October 11, 2011: Mr. Brathwaite expressed concern that the Court saw itself as being above the Constitution of Barbados and the jurisdiction of the Caribbean Court of Justice.¹¹⁶ Pointing to the Barbados death penalty cases, *DaCosta Cadogan v. Barbados* and *Boyce et al. v. Barbados*, Mr. Brathwaite said that the Court “seems to have accepted that the final determination of human rights issues under the constitution repose[s] in itself.”¹¹⁷

November 21, 2011: The Court found that the State partially fulfilled its obligation to inform all persons accused of a crime subject to the mandatory death penalty of their right to obtain a psychiatric evaluation by a State-employed psychiatrist.¹¹⁸

The Court noted that a committee comprising of members of the Solicitor General’s Chambers, the Ministry of Foreign Affairs, the Office of the Attorney General, the Office of the Director of Public Prosecutions, and an advisor on international law, had determined that the arraignment hearing would be the most appropriate stage in proceedings for criminal defendants to be informed of that right.¹¹⁹ The court requested further information from the parties regarding whether the described course of action had been implemented, and if so, whether it is functioning.¹²⁰

The Court found that the State had not set aside the death penalty imposed on Mr. DaCosta Cadogan or provided him with a re-sentencing

113. *Barbados ‘To Abolish Death Penalty,’* THE DAILY OBSERVER (Oct. 2, 2011), <http://www.antiguaobserver.com/barbados-to-abolish-mandatory-death-penalty/>.

114. *Id.*

115. *Id.*

116. Trevor Yearwood, *Not Final*, NATIONNEWS.COM (Oct. 11, 2011, 12:12 AM), available at <http://www.nationnews.com/articles/view/not-final/>.

117. *Id.*

118. *Boyce et. al. v. Barbados and DaCosta Cadogan v. Barbados*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Considering That” ¶¶ 30-33 (Nov. 21, 2011).

119. *Id.* “Considering That” ¶ 30.

120. *Id.*

hearing under the new legislative framework ordered by the Court.¹²¹ Since the State did not demonstrate that it made changes to the legislative framework, the Court reasoned that the State did not comply with orders relating to Mr. DaCosta Cadogan's sentence.¹²² The Court requested information from the State specifying when Mr. DaCosta Cadogan's resentencing hearing would occur.¹²³

The Court required the State to submit a report detailing the actions taken to comply with its remaining orders by February 27, 2012.¹²⁴ The court also required the State to submit reports on its compliance every three months.¹²⁵

February 2012: An update to the Organization of American States' *Basic Documents Pertaining to the Inter-American System* indicated that the State was "reviewing the whole matter of the death penalty."¹²⁶

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 204 \(Sep. 24, 2009\).](#)

[DaCosta Cadogan v. Barbados, Preliminary Objections, Merits, Reparations, and Costs, Seperate Concurring Opinion Judge García-Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 204 \(Sep. 24, 2009\).](#)

121. *Id.* "Considering That" ¶¶ 34-37.

122. *Id.* "Considering That" ¶ 37.

123. *Id.*

124. *Id.*

125. *Id.* As of the date of publication, the Court has not issued additional monitoring compliance documents.

126. Organization of American States, Secretariat of the Inter-American Court of Human Rights, *Basic Documents Pertaining to Human Rights in the Inter-American System*, 62 (February 2012).

3. Provisional Measures

[DaCosta Cadogan v. Barbados, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 4, 2008\).](#)

[DaCosta Cadogan v. Barbados, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 2, 2008\).](#)

4. Compliance Monitoring

[Boyce et. al. and DaCosta Cadogan v. Barbados, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 21, 2011\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

DaCosta Cadogan v. Barbados, Petition No. 1460-06, Inter-Am. Comm'n H.R. (Dec. 29, 2006).

2. Report on Admissibility

[DaCosta Cadogan v. Barbados, Admissibility Report, Report No. 7/08, Inter-Am. Comm'n H.R., Case No. 12.645 \(Mar. 4, 2008\).](#)

3. Provisional Measures

[None]

4. Report on Merits

DaCosta Cadogan v. Barbados, Report on Merits, Report No. 60/80, Inter-Am. Comm'n H.R., Case No. 12.645 (July 25, 2008).

5. Application to the Court

DaCosta Cadogan v. Barbados, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.645 (Oct. 31, 2008).

VIII. BIBLIOGRAPHY

Margaret A. Burnham, *Indigenous Constitutionalism and the Death Penalty: The Case of the Commonwealth Caribbean*, 3 INT'L J. CONST. L. 582 (2005).

DaCosta Cadogan and The Queen, Criminal Appeal No. 16 of 2005 (Supreme Court of Judicature Mar. 2, 2006 and May 31, 2006) (Barb.).

DaCosta Cadogan v. The Queen, [2006] CCJ 4 (AJ) (Caribbean Ct. J. Dec. 4, 2006).

CECILIA MEDINA QUIROGA, *THE BATTLE OF HUMAN RIGHTS: GROSS, SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM* (1988).

Jo M. Pasqualucci, *The Evolution of International Indigenous Rights in the Inter-American Human Rights System*, 6 HUM. RTS. L. REV. 281 (2006).

Brian D. Tittermore, *The Mandatory Death Penalty in the Commonwealth Caribbean and the Inter-American Human Rights System: An Evolution in the Development and Implementation of International Human Rights Protections*, 13 WM. & MARY BILL OF RTS. J. 445 (2004).

Trevor Yearwood, *Not Final*, NATIONNEWS.COM (Oct. 11, 2011, 12:12 AM), available at <http://www.nationnews.com/articles/view/not-final/>.

Barbados 'To Abolish Death Penalty,' THE DAILY OBSERVER (Oct. 2, 2011), <http://www.antiguaobserver.com/barbados-to-abolish-mandatory-death-penalty/>.