

## News Release, October 2009

# “Inter-American Court Ruling on Death Penalty in Barbados”

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We welcome the recent decision of the Inter-American Court of Human Rights in the case of **Tyrone DaCosta Cadogan** who has been sentenced to the mandatory death penalty in Barbados.

The Court found that the mandatory death sentence imposed on all those convicted of murder in Barbados violates the right to life as it is arbitrary and fails to limit the application of the death penalty to the most serious crimes. The Court Ordered that the State set aside the death sentence already imposed on Mr Cadogan and provide him with “*a hearing for the judicial determination of the appropriate sentence in his case, in consideration of the particular characteristics of the crime and the participation and degree of culpability of the defendant.*” The Court emphasised that the State could not re-impose the death sentence on Mr Cadogan.

The Court were also asked to consider - for the first time in a contentious case - whether Mr Cadogan’s right to a fair trial had been violated by the failure of the State to provide him with a psychiatric assessment at trial which it was argued needed to be provided in all mandatory death penalty cases. New medical evidence from a clinical psychologist was tendered to the Court indicating that Mr Cadogan suffers from a disorder which would have allowed him to raise a defence of diminished responsibility at trial. The Court found that Mr Cadogan was denied a fair trial as his mental health at the time of the offence was never fully evaluated by mental health professionals for the purpose of preparing his defence in a case where the death penalty was the only possible sentence. The Court further held that:-

*“in order to guarantee that events such as those analysed in the present judgment are not repeated, the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty are duly informed, at the initiation of the criminal proceedings against them, of the right to obtain a psychiatric evaluation carried out by a state-employed psychiatrist.”*

Mr Cadogan was represented by Saul Lehrfreund MBE and Parvais Jabbar of the Death Penalty Project, Douglas Mendes SC of the Trinidad Bar, Alair Shepherd QC and Tariq Khan of the Barbados Bar and Alison Gerry and Ruth Brander at Doughty Street Chambers. The public hearing in this case was held at the Seat of the Court in Costa Rica on 1<sup>st</sup> July 2009, during the Court's 83<sup>rd</sup> ordinary period of sessions.

The judgment marks another major success for the Death Penalty Project at Simons Muirhead & Burton Solicitors, who were asked to assist the lawyers in Barbados in this case and who have been providing free legal representation to prisoners facing the death penalty in the English speaking Caribbean for more than twenty years.

After the judgment was delivered, Douglas Mendes SC who appeared before the Court said:

*"This case sends a clear message to states around the world who retain the mandatory death sentence that it is a cruel punishment which violates the universal prohibition against the arbitrary deprivation of life. In fashioning an appropriate remedy, the Court has gone further than it has ever done before. Rather than order the Executive in Barbados to commute the death sentence imposed on Mr Cadogan, the Court has emphasised that sentencing is a judicial function and as such ordered that the domestic courts in Barbados should determine the appropriate sentence in this case. This judgment clearly adheres to the principle of international law that every violation of an international obligation that has caused damage gives rise to a duty to give adequate reparations."*

Alair Shepherd QC, Mr Codgan's Attorney in Barbados who initiated these proceedings under the Inter-American system for the protection of human rights said:

*"This judgment represents a very important step in ensuring that persons' accused of murder are assured that, regardless of their financial position, they are provided by the Crown with the necessary medical experts to ensure that they receive a fair trial. Barbados has recently emphasised its commitment to international law by agreeing to abolish the mandatory death penalty and it is to be hoped that as a result of this judgment there will now be a judicial system which, even if insistent upon retaining the death penalty, will facilitate defence counsel in fully exploring the state of mind of persons whose lives are at stake"*

Saul Lehrfreund MBE and Parvais Jabbar, Executive Directors of the Death Penalty Project state:

*"The Inter-American Court on Human Rights have once again declared the mandatory sentence of death to be unlawful in a democratic society. In*

*addition, the Court have confirmed that minimum fair trial guarantees must be strictly observed in all capital cases including the right to obtain a psychiatric evaluation in the preparation of a criminal defence. This landmark judgment reflects the notion that the law should move progressively towards the greater protection of human rights and has set new essential minimum requirements designed to strengthen the due process rights of those facing the death penalty.*

*Mr Cadogan who had earlier faced possible execution will now have an opportunity to put forward important medical evidence before the courts, an opportunity denied him before he was sentenced to death”*

### **Notes to Editors**

1. On 18<sup>th</sup> May 2005, Mr Cadogan was convicted of murder and sentenced to death by hanging by the Supreme Court of Barbados. On 31<sup>st</sup> May 2006, Mr Cadogan appealed to the Court of Appeal of Barbados which was dismissed. Finally, he filed an application for leave to appeal against his conviction for murder with the Caribbean Court of Justice, but this application was dismissed on 4<sup>th</sup> December 2006.
2. The Death Penalty Project is an international human rights organisation housed in the offices of Soho legal firm Simons Muirhead & Burton, providing free legal representation to many individuals still facing the death penalty in the Caribbean and Africa. The organisation receives generous support from the Sigrid Rausing Trust, the Oak Foundation, the UK Foreign & Commonwealth Office and by a grant from the Foundation of the Open Society Institute.
3. For further information please contact Saul Lehrfreund or Parvais Jabbar, Executive Directors of the Death Penalty Project at Simons Muirhead & Burton or Alair Shepherd QC at Inn Chambers, Bridgetown, Barbados.

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