

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 54/2016**

PRECAUTIONARY MEASURE No. 706-16

Matter of Fred Smith and others regarding The Bahamas
November 4, 2016

I. INTRODUCTION

1. On September 6, 2016, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a request for precautionary measures presented by “The Grand Bahama Human Rights Association” (“GBHRA”) (hereinafter “the applicant”) seeking that the IACHR require the Commonwealth of The Bahamas (hereinafter “The Bahamas” or “the State”) to adopt the necessary protective measures to safeguard the lives and personal integrity of the members of Mr. Fred Smith, Joseph Darville, Romauld Ferreira, Kirkland Bodie and Francisco Núñez, all of them members of the “Save The Bays” advocacy group (hereinafter “the proposed beneficiaries”). According to the request for precautionary measures, the proposed beneficiaries allegedly received threats against their lives and personal integrity as a consequence of their work as human rights defenders.

2. After analyzing the factual and legal arguments put forth by the parties, the Commission considers that the information presented demonstrates *prima facie* that the five identified members of “Save The Bays” are in a serious and urgent situation, since their lives and personal integrity face an imminent risk of irreparable harm. Consequently, according to Article 25 of the Rules of the IACHR, the Commission requires The Bahamas to: a) Adopt the necessary measures to protect the lives and personal integrity of the five identified members of Save The Bays and the members of their respective nuclear families; b) Adopt the necessary measures to ensure that the identified members of Save The Bays may pursue their work as human rights defenders without being subject to any threats, harassments or intimidation; c) Agree on the measures to be adopted with the beneficiaries and their representatives; and d) Report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure in order to prevent their repetition.

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

3. According to the request, Save The Bays (hereinafter, “STB”) is a Bahamian advocacy group that defends the right to clean water, coastal access and freedom of movement in the face of alleged unregulated developers who apparently are closely linked with State authorities (some of them are also members of GBHRA). Over the past 18 months, members of STB have been subject to steadily escalating campaign of harassment, intimidation and threats of prosecution or summary incarceration that has been carried out by both agents of the State and individuals. Apparently, this is due to landmark cases recently won by the proposed beneficiaries at the internal level against senior members of the Government, as well as successful opposition to projects undertaken by certain developers recognized as major financial backers of the current administration. The request for precautionary measures is based on the following alleged facts and arguments:

A. As contextual information, the applicants indicate that all five of the proposed beneficiaries have already been directly affected by frequent efforts to harass and intimidate STB. For instance,

Mr. Fred Smith, who is the STB legal director, has been physically attacked by employees of a politically connected developer in 2013. Also, he was subject to hostile and xenophobic slurs during several “hate rallies” that took place in July and December 2014, and January 2015, in which demonstrators showed placards accusing him of being a member of Ku Klux Klan, questioning his racial origins and denouncing him as a thief or fraud. These rallies were reported to the Police in February, April, May and August 2015, with apparently no response to date. In addition, the applicants point out that Mr. Núñez and Darville “[...] were both targeted during one of these hostile demonstrations, while Romauld Ferreira, an environmental attorney, has suffered a lengthy intimidation campaign including threats of death, break-ins at his home and office vandalism, all of which is the result of his work with STB.” According to an affidavit filed to the courts, in February 2015, Mr. Ferreira explains that “[...] [he] was approached by a man [...] who is a known PLP [Progressive Liberal Party] (governing party) ‘hatchet man’ [...].” According to the applicants, explicitly threatened hi] life for making ‘noise’ about the PLP party in the media. Particularly, such person stated that: “when you criticize and make noise against the PLP we tell you to bring cameras. When you continue to make noise against PLP we tell you to bring even more cameras so when we kill you everyone will see and know what happens to those who make noise and criticize the PLP.’ [...].” Then, STB member Kirkland Bodie “[...] has been the target of online attacks in connection with his work with STB.”

B. According to the applicants and newspapers information¹, there are allegations that in March 31, 2016 the police detained two individuals who were allegedly hired by a well-known local developer “campaign backer” of the PLP to kill Mr. Fred Smith, and were later released on April 5, 2016. According to a relevant newspaper quoted by the applicants, the Prime Minister and Deputy Prime Minister were mentioned in recordings concerning conversations between the local developer and the presumed hitmen. Apparently, neither he nor STM members were questioned by the police about the said individuals and, according to the paper, the Commissioner of Police denied ever having received any complaint from the proposed beneficiaries.

C. In early August 2016, members of STB received credible information from trusted sources that their lives may be in imminent danger. Apparently, several independent community sources have affirmed that individuals acting on behalf of land developers facing legal action by STB, certain agents of the State, or both, intend to “silence” defenders who advocate for environmental rights “[...] in the very near future by subjecting them to serious harm, torture, or death.” Over the last three days prior to the filing of the present request, trusted sources in law enforcement have affirmed that the danger is imminent, and that plans may involve the arbitrary detention of the proposed beneficiaries in order to subject them so serious harm or murder while in custody. According to the applicants, “deaths while in police custody do occur in The Bahamas with some regularity and as the latest country report by Amnesty International noted, ‘impunity for allegations

¹ <http://www.tribune242.com/news/2016/mar/10/claim-nygard-hired-hitmen/>;
<http://www.bahamasnational.com/?q=node/2435>; <http://jonesbahamas.com/fred-smith-a-hypocrite-or-an-environmental-terrorist/>; <http://www.forbes.com/sites/danielfisher/2015/04/09/billionaires-bacon-nygard-trade-nasty-allegations-in-bahamas-spat/#2fbeb02b6600>; <http://www.vanityfair.com/news/2015/12/peter-nygard-louis-bacon-legal-battle-bahamas>;
<http://nypost.com/2016/03/11/bahamas-billionaires-spat-turns-serious-with-murder-for-hire-claim/>

of police abuses remained the norm.’ This threat applies to all five of the beneficiaries of this petition, but Fred Smith is thought to be the target facing the highest risk.” Also, the families of the proposed beneficiaries may be in equal danger. As for the identity of the informants, the applicants stressed out that this must be kept in confidentiality for fear of retaliations against them. Considering the abovementioned, some of the proposed beneficiaries fled the country, but would have to return soon due to their engagement with relevant law suites.

4. On September 27, 2016, the IACHR requested information from both parties.

5. On October 3, 2016, the State send a communication informing that the Royal Bahamas Police Force has initiated an investigation into the allegations contained in the request for precautionary measures, and would provide a report to the Commission as soon as possible. In addition, it annexed a press release issued by the Ministry of Foreign Affairs stressing the aforementioned.

6. On the same day, the applicants sent a report in which they provide further details concerning the situation of risk of the proposed beneficiaries: i) all of the proposed beneficiary currently live and reside in The Bahamas; ii) according to an affidavit filed on March 9, 2016, before the Supreme Court of The Bahamas, “[...] over the past two to three years, [the local developer] has masterminded an aggressive campaign of harassment, intimidation and violence against individuals in The Bahamas, including the five plaintiffs [among who Mr. Fred Smith, Joseph Darville and Romauld Ferreira], whom he appears to have viewed as his personal enemies. This campaign includes a conspiracy with at least two Nassau-based criminals to have [...] Frederick Smith [and other persons] murdered. These and other relevant facts have been affirmed in sworn statements provided to us by two of the gang members [...] along with audio and video copies of five covertly recorded meetings that took place between [the purported hitmen] and [the local developer], in which violent and aggressive acts were discussed. These acts of harassment, intimidation and violence all took place against the backdrop of what has been described to us by the plaintiffs as high-profile public interest litigation between, on the one side, a non-profit environmental group [Save The Bays] and, on the other side the defendants herein, [the local developer and his lawyer], and senior members of the cabinet of the Government of The Bahamas;” iii) the applicants indicate that, in the event he’s held in custody, Mr. Smith would be harmed in such a manner that would allow the authorities to claim innocence; iv) following the filing of the present request for precautionary measures, the applicants indicate that the situation of risk “if anything, [...] had intensified. It was said [by STB’s sources] that a plot to frame Smith by planting narcotics or other contraband in his vehicle or on his property were being actively considered. On Friday, September 23, Fred Smith received another panicked call from an extremely well-placed source who said Smith’s liberty and safety were once again at risk and that he must immediately make arrangements to flee the country [...]”; v) in addition, the applicants reported online attacks directed against the proposed beneficiaries by a popular political website called “www.bahamasuncensored.com”, which is well known to be very closely connected to the PLP. In this site, attacks shifted from targeting migrant rights defenders to environmental activists and in particular STB over the past six months, coinciding with a court action. In particular, they refer to the image of a victim with a gun in his mouth with the caption “Sate The Bays needs to be destroyed”. Also, numerous online entities were created by unknown persons, apparently for the express purpose of attacking and vilifying STB, such as the prominent “Deep-throat Bahamas,” which accuses the

proposed beneficiaries of being a political group that seeks to destabilize the government, as recently claimed by the Minister of Education in Parliament.

7. Regarding responses received by the relevant authorities, the applicants claim that, to their knowledge, none of the witnesses or plaintiffs in the matter of the alleged assassination plot was ever approached by the police, despite their requests to be interviewed. Moreover, they indicate that on September 29, 2016, Superintendent of Police telephoned one of the proposed beneficiaries to ask him to come in and be interviewed in relation to the death threats. Also, senior officers visited the offices of Mr. Fred Smith, although he was out of the country at that moment. On this point, according to the applicants, “it would seem that the State is only now minded to investigate these allegations, simply because international scrutiny has been brought to bear on STB’s plight [...]; we are extremely concerned that these interviews with police will be used as an opportunity to seek to force STB members to reveal their confidential sources [...]; there is deep concern that reporting the serious developments of the last few months to local authorities could actually increase rather than decrease the threat faced by the [proposed beneficiaries].” As for the press release issued by the Ministry of Foreign Relations, the applicants believe that the intention was to present the Commission with “[...] a false or exaggerated impression of their commitment to protecting [their] safety and security, while at the same time creating another opportunity to portray STB as seeking to ‘defame’ or ‘destabilize’ the State through [their] application for precautionary measures.”

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

8. The mechanism of precautionary measures is a part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, and Article 18 of the Commission’s Statute. The mechanism of precautionary measures is set out in Article 25 of the Commission’s Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

9. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid 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 measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its 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.

10. In the present situation, the Commission considers that the requirement of seriousness is met, in light of the alleged threats, harassments and intimidations against the members of STB as a consequence of their engagement as human rights defenders. In particular, the information suggests that these attacks – which include alleged smear campaigns, death threats, physical aggressions and break-ins in their homes and offices – constitute forms of retaliation, due to their opposition to major urbanistic projects menacing the local environment, as well as other relevant law suits challenging high rank officials and closely-related particulars. Under these circumstances, the applicants affirm that in March 2016, an alleged plot to murder the director of STB has been revealed. In addition, in early August 2016, members of STB received information from trusted sources according to which they were supposed to be seriously harmed or murdered following an alleged arbitrary detention, in such a manner that would allow the plausible authors to claim innocence. In this regard, it is especially worth pointing out that the applicants claimed that senior members of the Government and a political party were reportedly linked with high profile individuals who concerted the aforementioned attacks.

11. Within the framework of this requirement, the Commission observes that the elements submitted are consistent with information received concerning the situation of human rights defenders in The Bahamas. Indeed, in its Report on Criminalization of the Work of Human Rights Defenders of 2015, the IACHR noted that “[...] human rights defenders in The Bahamas face a hostile environment that endangers their safety and work. In particular, [mutatis mutandis], it was reported that members of the Grand Bahama Human Rights Association (GBHRA) have been threatened for speaking out against recent changes in migration policies. The defenders also indicated that government officials, some of them of high level, made statements against the defenders, minimizing their work. For example, they noted that the Foreign Minister had threatened to initiate criminal proceedings for defamation and sedition against Fred Smith and Joe Darville, GBHRA directors, for their opinions against the new immigration policy.”²

12. Taking into consideration the specific characteristics of the present situation and the general context in which it is submitted, the Commission considers *prima facie* that the rights to life and personal integrity of the identified members of Save The Bays are in a situation of risk. As for the members of their respective nuclear families, the IACHR esteems that they share a common factor of risk, in light of the nature of the threats and the activities of the human rights defenders above mentioned.

² IACHR, Report on the “Criminalization of the Work of Human Rights Defenders”, 2015, paragraph 80, available at: <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

See also: IACHR, 154 Period of Sessions, Human rights situation of migrants in Bahamas, held at IACHR Headquarters on March 20, 2015, available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>

13. Regarding the requirement of urgency, the IACHR considers that it is met, since their situation of risk may increase as they continue to carry out their activities as human rights defenders. In this regard, the applicants stated that the members of STB have been subjected to threats, intimidations and attacks since 2013, and that the situation worsened since they filed a successful lawsuit against high profile members of the Government in March 2016. Also, in August 2016, some of them had to flee the country due to credible information according to which they were about to be harmed or murdered while in custody. As it has been reported, following the filing of the present precautionary measures, the applicants indicate that the situation of risk, “if anything, [...] had intensified,” since further detailed information was received concerning a plot to detain Mr. Fred Smith. On this point, the applicants denounce that despite having filed complaints before the relevant authorities since 2015, no effective action has been taken towards the investigation of the purported facts. Furthermore, it is worth mentioning that although the relevant authorities were informed on the alleged threats, it seems that no protective measures were implemented to date, in order to safeguard the lives and personal integrity of the members of STB. Therefore, taking into account the current situation of risk, the Commission considers necessary the immediate implementation of measures of protection in favor of the members of STB and their respective nuclear families.

14. Regarding the requirement of irreparable harm, the Commission considers it fulfilled, to the extent that the possible effect on the right to life and personal integrity represents consequences of an irreparable nature.

15. The IACHR wishes to highlight the great importance of human rights defenders’ work in the area, particularly pointing out that violent acts and other attacks to human rights defenders do not only harm the rights to which every human being is entitled, but also infringe upon the essential role these defenders fulfill in society, and create defenselessness for the people who are target of their work. The Commission would also like to reiterate that defenders’ work is essential to build a strong and long lasting democratic society, and have a key role in the process to fully achieve the rule of law within States, as well as a strengthened democracy. In that sense, the Inter-American Commission has consistently pointed at the great importance of the work done by persons committed to the promotion of human rights, monitoring and legal defense, and by organizations that unite many of them. It has highlighted the fact that public officials ought to refrain from making statements discrediting defenders or accusing their organizations of wrongful or illegal doing with no further reason than the human rights defense and promotion work they do.³

IV. BENEFICIARIES

16. The IACHR establishes that the beneficiaries of the present precautionary measure are Fred Smith, Joseph Darville, Romauld Ferreira, Kirkland Bodie and Francisco Núñez, which are members of Save The Bays and their respective nuclear families.

³ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31 2013, para. 124, Report on the Situation of Human Rights Defenders in the Americas, tenth recommendation.

V. DECISION

17. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests The Bahamas to:

- a) Adopt the necessary measures to protect the lives and personal integrity of the identified members of Save The Bays and the members of their respective nuclear families;
- b) Adopt the necessary measures to ensure that the identified members of Save The Bays may pursue their work as human rights defenders without being subject to any threats, harassments or intimidation;
- c) Agree on the measures to be adopted with the beneficiaries and their representatives; and
- d) Report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure in order to prevent their repetition.

18. The Commission also requests that the Government of provide information, within the period of 20 days from the date that the present resolution is issued on the adoption of the required precautionary measures, and provide updated information periodically.

19. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, the granting of precautionary measures and their adoption by the State shall not constitute a prejudgment of any violation of the rights protected in the American Declaration of the Rights and Duties of Man or any other applicable applicants.

20. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to The Bahamas and to the applicants.

21. Approved on November 4, 2016, by: James Cavallaro, President; Francisco Eguiguren Praeli, First Vice-President; Margarette May Macaulay, Second Vice-President; José de Jesús Orozco Henríquez; Paulo Vannuchi; Esmeralda Arosemena de Troitiño; Enrique Gil Botero, members of the IACHR.

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