**RESPONSE BY THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS**

 **TO THE**

**REQUEST FOR PRECAUTIONARY MEASURES BY MEMBERS OF SAVE THE BAYS (GRAND BAHAMA HUMAN RIGHTS ASSOCIATION)—SITUATION ARISING OUT OF ENVIRONMENTAL ADVOCACY WORK IN THE BAHAMAS**

**SUBMITTED TO**

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**21 NOVEMBER 2016**

**Response of the Government of the Commonwealth of The Bahamas to the Request for Precautionary Measures – Situation of members of Save The Bays (Grand Bahamas Human Rights Association)**

**(Precautionary Measures granted by the Commission on 4 November 2016).**

**SECTION I:**

The Commonwealth of The Bahamas (“The Bahamas”) has a long history of democratic governance, with a tradition of free and fair elections and national stability. There have been changes of government without violence. In 2015 a Referendum was conducted. There is respect for the rule of law and the rights and freedoms of the individual, guaranteed by entrenched constitutional rights. Freedom of speech and the press are vital to this open democracy, with many privately-owned radio stations and several privately owned television and radio stations operating alongside the State-run media, as well as several major privately owned print media. There is no Government-censorship, and broadcasting and television services are regulated by an independent statutory body called the Utilities Regulation and Competition Authority (“URCA”), established by an act of Parliament.

**Introduction and Background**

1. On 27 September 2016, the Government of the Commonwealth of The Bahamas (“the Government”) received from the Inter-American Commission on Human Rights (“the Commission”) a request for information concerning the situation referred to by the Petitioners in their request for precautionary measures to the Commission submitted 6 September 2016 (“the Petition”).

2. Regrettably, before The Bahamas could respond definitively to the Commission’s request for information, and despite a Diplomatic Note from the Bahamas dated 3 October 2016 indicating that a response was being prepared, the Commission on 4 November 2016 granted the precautionary measures, by Resolution 54/2016 This was notified to the Bahamas by letter dated 8 November 2016.

3. While respecting the Commission and its role, the Government considers that there was and is no basis in fact or law for the Commission’s grant of such precautionary measures. As set out in the submissions provided below, the relevant law enforcement agencies tookcontemporaneous steps to investigate complaints made by the Petitioners and responded to the more recent complaints made before the Commission, several of which were only being raised for the first time. Further, the Government submits that the Petitioners have failed to satisfy the criteria applied by the Commission in granting precautionary measures pursuant to article 25 of the Commission’s Rules of Procedure (“gravity”, “urgency”, “irreparable harm”). To the extent that the Commission found *prima facie* evidence of these criteria, it acted on incomplete, editorialized and false information, and did not have the benefit of any submissions from The Bahamas.

4. In this regard, the Government notes that the reasoned Resolution containing the grant of the precautionary measures refers in a material way to further information submitted by the Petitioners, in which they “provided further details concerning the risk of the proposed beneficiaries” (paragraph 6). This report was apparently submitted on the 3 October 2016. The Government was not furnished with a copy of the supplemental report until 11 November, nor was there any reference back to The Bahamas.

5. The Government considers that the grant of precautionary measures without hearing from the State is contrary to the spirit (if not the letter) of article 25.5 of the Rules of Procedure, and is of the view based on the true facts of this matter there was (and is) no urgency that justified a departure from the rule requiring the Commission to hear submissions from the State prior to the grant of precautionary measures.

 6. In the premises, the Government also requests that its response and the information be treated as a grounded petition for the lifting of the precautionary measures in accordance with Rule 25. Further, the Government requests that the Commission urgently reviews the measures, in consultation with The Bahamas and any other parties as may be necessary.

*Procedural Chronology*

7. As indicated, on the 27 September 2016 the Government received a request from the Commission for information concerning a request for precautionary measures made by five members of an environmental lobby group popularly referred to as Save the Bays (“STB”).[[1]](#footnote-3) The Petition was lodged through the Grand Bahama Human Rights Association (“GBHRA”) to the Inter-American Commission on Human Rights (“the Commission”).  Specifics of the main factual allegations are set out below, but the gravamen of the allegations was that: (i) that Petitioners were living in urgent fear for their lives, safety and freedom because of their work as human/environmental rights defenders; and (2) that the relevant authorities failed to protect their right to life and personal integrity.

8. The Government confirmed its receipt of the Petition by Diplomatic Note No. 105/2016 dated 3 October 2016 to the Commission, indicating that the matter was being further investigated and a response would be provided as soon as possible.   The notice was also accompanied by a copy of a public statement to the media (published on the 2 October) by the Minister of Government responsible for foreign affairs, affirming the Government’s commitment to publicly investigate the matters. The Diplomatic Note and notice were sent as an immediate and holding response to the Commission to provide assurance that the matter was being taken seriously and that the Government would be responsive to the request for information. (Although the Commission is in receipt of Diplomatic Note 105/2016, a copy is attached to this response for convenience as **Appendix 1.)**

9. On 3 October 2016, it appears that the Petitioners submitted further material to the Commission in support of the request for precautionary measures. This further material was neither notified nor communicated to the Government. The Commission thereupon proceeded, without further notice, to grant the precautionary measures on 4 November 2016. The supplemental information which was presented to the Commission by the Petitioners was transmitted to the Permanent Mission of The Bahamas by letter dated 4 November 2016, but not received until the 11 November 2016 (see Diplomatic Note No. 132/2016 at **Appendix 2**).

**Summary of the Government’s positions and arguments**

10. The Government reassures the Commission of its respect for the Rule of Law and the safety of all within its borders. The Government’s main submissions to the Commission in response to the request for information and in support of its request for the Commission to urgently review the measures in consultation with The Bahamas and lift the precautionary measures are as follows:

 (i) The Government, through the relevant law enforcement authorities, has been responsive to the allegations raised by the Petitioners and took steps to promptly investigate the complaints when they were made. These investigations did not reveal any credible basis to support the allegations of a campaign of intimidation or threat against the Petitioners by official or “unofficial” agents of the Government, or from non-state actors. To demonstrate the commitment of our law enforcement officials to the safety of all within the borders of The Bahamas, it is noteworthy that Royal Bahamas Police Force investigated the alleged “murder for hire” plot when it was reported in the media. No criminal no criminal complaint was ever made by the Petitioners. The persons who the Petitioners, in the media, alleged to be hit men were arrested. After investigations, they were released. The police concluded that there was insufficient evidence to charge them based on preliminary investigations. However, the investigation remains open.

(ii) Law enforcement officials took immediate action to investigate the recent complaints made to the IACHR, although the failure of the Petitioners to meet with law enforcement to provide further information and identify the sources or basis for their allegations has hampered the ability of the police to conduct proper investigations.

(iii) The prevailing law enforcement assessment based on the investigations which have been conducted and, which are still active, is that there is no credible threat of imminent harm or danger (or any harm or danger) to any of the Petitioners, and other allegations similarly have no basis or lack credibility.

(iv) Based on a true appreciation of the facts there is no basis in fact or law for the grant of the precautionary measures. To the extent that the Commission found that the Petitioners met the criteria of *gravity*, *urgency* and *irreparability* in article 25 of the Commission’s Rules of Procedure there is nothing to justify the grant of precautionary measures. As will be seen below, the Government attributes political motives to the Petitioners who submitted to the Commission material which was skewed and in some cases deliberately misrepresented. Furthermore, the Commission did not have the benefit of any submissions from the Government.

(v) As a result, the Commission failed to properly appreciate the context in which these allegations have been raised, the personalities of the main protagonists, and the real possibility that the Petitioners (or at least some of them) may be partly motivated by political objectives. The backdrop to the complaints is commercial litigation involving private wealthy individuals, which has admittedly polarized the supporters of each camp, and which has led to opposing public expressions of support. The Government has never taken part in these rallies, nor endorsed or encouraged any of them.

(vi) The Government, wishes to reassure the Commission that through the relevant law enforcement agencies and the Office of the Attorney General, continue to take seriously and investigate the complaints made by the Petitioners and will take whatever steps are appropriate to ensure their safety as a matter of routine, and in accordance with the protection given to all other persons within the territory of The Bahamas.

11. The Government’s Response and request for modification/lifting of the precautionary measures is structured as follows: **Section I: Introduction and Background;** **Section II: Preliminary and Procedural Matters**; **Section III: Allegations Made by Petitioners and Government’s Submissions in Response**; **Section IV: Failure to satisfy the requirements for the grant of precautionary measures (art. 25)**; **Section V: Conclusion**.

**SECTION II:**

 **Preliminary and Procedural Matters**

*Failure to solicit information on supplemental report submitted by Petitioners*

12. As indicated in the introductory section, the Commission proceeded to grant the precautionary measures notwithstanding the Government’s Diplomatic note of 3 October 2016 indicating that the Government was in the process of preparing a response. The Bahamas’ Permanent Mission to the OAS also remained in contact with the Secretariat of the Commission through official and non-official diplomatic channels, providing updates on the Government’s progress with its response and seeking further time to complete its submissions.

13. Furthermore, as indicated in the reasoned Resolution, the Commission received further information from the Petitioners on the 3 October 2016 that was never notified or communicated to the Government. It appears, on the face of the Resolution, that the further information sent by the Petitioners on the alleged risk they faced was accorded significant weight by the Commission in deciding to grant the precautionary measures, and a summary of this material is set out extensively at paragraph 6 of the Resolution.

14. The Government notes that it was regularly in touch with the Commission (both in writing and verbally) from the time the Petition was received on 27 September up to the time notification was received of the Precautionary Measures. At no time during that period did the Commission inform the Government that additional submissions had been received from the Petitioners. The Government considers, however, that the failure of the Commission to await its response and solicit additional information from it in response to the further allegations provided by petitioners violates the spirit of article 25.5 of the Commission’s Rules of Procedure. It is also a repudiation of the general legal principle that pertains in both the domestic and international legal system of the right of a party to be given an opportunity to be heard before any decision is taken adverse to them (often expressed in the maxim *audi alteram partem*).[[2]](#footnote-4) In this regard, it is surprising that the Commission states at paragraph 2 of the Resolution that its conclusion to grant the precautionary measures was arrived at “*After analyzing the factual and legal arguments put forth by the parties*…”. In fact, there were no factual or legal arguments from the Government.

15. While the Government is cognizant that the grant of precautionary measures and their adoption by the State concerned do not constitute prejudgment on a violation of any of the rights protected by applicable instruments under the Inter-American system (article 25.8, and paragraph 19 of the Resolution), it is the case that the majority of situations in which precautionary measures are granted do not ever proceed to a hearing. As a result, the State has no effective opportunity to be heard and the findings remain a black mark against the reputation of the State. Given The Bahamas’ strong history of centuries of Parliamentary Democracy and its strong commitment to protection of human rights, the Rule of Law and freedom of the media, the Government regards the precautionary measures as untenable and, respectfully, unjustifiable.

16. The Government has expressed its profound regret and concern that the Commission proceeded *ex parte* in determining this matter (see Diplomatic Note No. 133/2016, dated 14 November 2016 (**Appendix 3**).

17. Further, as explained below, the Government does not consider that the current situation constitutes one of any urgency such as to justify the Commission departing from its rules. In any event, the Government considers that the decision of the Commission to grant the measures, whether in part or in whole, based on the new material without soliciting the Government’s response, constitutes grounds for the *urgent* review of such measures in consultation with the State.[[3]](#footnote-5)

 *Failure to Exhaust Domestic Remedies*

18. The Government also realizes that, having regard to the inherently urgent and vital nature of requests for precautionary measures, the exhaustion of domestic remedies is not considered by the Commission a precondition to the grant of such measures (as is the similar practice of other international tribunals).[[4]](#footnote-6) As a matter of principle, however, the Government wants to highlight that the request for precautionary measures arises out of and is largely predicated on a civil action which is before the Supreme Court of The Bahamas in which three of the Petitioners are plaintiffs. In that action, they are also seeking interlocutory injunctions (e.g., protective measures) in respect of various alleged tortious acts (past and threatened) by which they say persons have harmed them or intend to do them harm. As related below (paragraph 48), the Supreme Court is seized of the matter and to date has not granted any interlocutory protective order. This puts the Commission in the rather invidious position of having made rulings which may have the effect of possibly prejudicing (or in the very least influencing) matters currently before the State’s judicial system.

  *Contextual background to allegations*

19. Before addressing the specific allegations and the Government’s responses, the Commission should understand the context in which these allegations and the situation of the Petitioners arise. In fact, the Commission’s Rules and practice requires consideration of the contextual aspects of a particular complaint in weighing the criteria for the grant of precautionary measures (discussed further below).[[5]](#footnote-7) In providing some domestic context to this matter, the Government wishes to make it clear that this is not intended to diminish or downplay any issues relating to the protection of rights. The Government wishes to reassure the Commission that the Government and all agencies of the State have always taken rights seriously and taken the requisite measures to protect human and fundamental rights. However, there is a legitimate concern by the Government that the Commission may have acted on information and narratives that are not only incomplete, but deliberately exaggerated and in some cases on allegations that are either unfounded or knowingly false.

 20. All of the Petitioners are either members of or affiliated with a non-profit company called the Coalition to Save Clifton Bay (popularly referred to as “Save the Bays”) (“STB”). Mr. Fred Smith is in fact a founding member of the said company and the current chairman.[[6]](#footnote-8) This company (as well as others), have been used by Mr. Smith in particular to bring environmental challenges to various large-scale developments which have been carried out by private developers, through judicial review challenges aimed at the permitting agencies of Government.[[7]](#footnote-9) In fact, many of these environmental bodies with whom Mr. Smith is associated are *ad hoc* bodies incorporated for the purposes of bringing specific litigation (and to avoid payment of costs), and have no history of environmental or human rights advocacy outside of the litigation which they undertake.

21. The STB group commenced judicial review challenges in 2013 to proposed developments being carried out by the internationally well-known multi-millionaire fashion designer Peter Nygard on his private property in Lyford cay, an exclusive gated community in New Providence.[[8]](#footnote-10) Mr. Nygard has also been embroiled in a long-running and acrimonious legal dispute with his neighbour, the billionaire hedge-funds manager Louis Bacon.[[9]](#footnote-11) It is believed that both parties have made financial contributions to political parties.It should also be noted that references to alleged political donations by any person to a political party is not necessarily indicative of any support for or connections to that party.[[10]](#footnote-12) Current electoral legislation and rules permits persons to donate freely to any political party as they see fit, and neither is there a legal requirement to report such donations.[[11]](#footnote-13)

22. Mr. Bacon is also one of the directors of STB, and believed to be a major funder of the group, which he has admitted to financially “backing”. [[12]](#footnote-14) The legal rivalry and dispute between the two has often played out not only in the courts, but in public expressions of support by persons who support their respective “causes”. As explained later, these are events organized and hosted by private persons with no affiliation to Government and exercising their rights to free speech in situations which are controlled and monitored by the Police.

*The activism of Fred Smith, QC*

23. Petitioner Smith in particular has a long history of using the media and other public fora to draw attention to various causes, whether associated with litigation (purportedly in the interest of the environment or human rights) or other political causes. In this regard, it is important for the Commission to know that Petitioner Smith is a longtime and ardent supporter of the opposition party (FNM) and opposes the current Government. In an affidavit filed before the Privy Council in 2006 (referred to further below), Mr. Smith indicated that: “*I have been active in the political field, assisting in organizing and managing the FNM party legal teams in Grand Bahama in the last five general elections. I have also acted for the FNM party in several election court cases as against the other main party, the PLP*”.[[13]](#footnote-15) (See copy of affidavit at **Appendix 4**.) Mr. Smith has also announced that he is considering running as a candidate in the 2017 election, and that he will run as “an FNM or an independent.” [[14]](#footnote-16)

24. In fact, and as will emerge shortly, two of the Petitioners (both Mr. Smith and Mr. Ferreira), are either candidates for high political office (or have announced intention to do) on the ticket of the political party opposed to the Government. General elections must be held before the 7 May 2017, and election campaigning is well underway. Therefore, the Commission cannot close its eyes to the possibility that its processes are being abused by several of these petitioners for political motives, including to further their political aspirations.

25. Petitioner Smith’s activism stretches back several decades, in which he has assisted in litigating the rights of immigrants and other persons, and environmental issues. The Government (irrespective of which political party has been in power) has often been the respondent in these matters, and Mr. Smith has always been an outspoken critic. Instead of attracting any retaliation or other measures from any Government, Petitioner Smith was named a Queen’s Counsel in 2009, partly in recognition of legal advocacy in respect of human and environmental rights. [[15]](#footnote-17) The Commission is asked to note that Mr. Smith continues to move unhindered around The Bahamas, including the Courts. He lives in Grand Bahama and travels freely within and outside The Bahamas socially and professionally.

26. Petitioner Smith’s public campaign and criticism of Government and senior officials is given to theatrics, over-dramatization and hyperbole. For example, he has accused the Government of “running Auschwitz in The Bahamas” (in respect of the operation of the migrant detention centre), of institutional terrorism, and reportedly has encouraged litigants to sue in order to bankrupt the Government.

27. He has also made very skillful use of the public media and international bodies to gain every advantage in litigation, or portray himself or his clients as victims or vulnerable. For example, in 2006, after costs were ordered by the Privy Council against his clients and those persons funding the litigation in a major judicial review challenge, he filed an affidavit before the Privy Council alleging that the Government would use “political victimization” or use its agencies to intimidate and threaten the funders behind the development, thought to be mainly expatriates home owners. In fact, although the law allows successful litigants to pursue costs against unsuccessful litigants, the Government never pursued any costs against his clients, despite huge expenditure by the Government in having to defend the litigation.

28. As things currently stand, Petitioner Smith has, on a conservative estimate, more than a dozen legal challenges against the Government or it agencies in the system. He has been successful in several of these, as well as has lost some of them. Thus, to represent to the Commission that members of STB (or petitioner Smith) are being targeted or have come under any threat by the State or its agents because of “winning” a specific landmark case is illogical and completely repudiated by Mr. Smith’s long litigation practice. He has won several major cases against various Governments over the course of his practice.

29. Furthermore, the “landmark case” that the Petitioners refer to is really only a first-instance decision of a Judge in the Supreme Court.[[16]](#footnote-18) That matter is currently on appeal to the Court of Appeal and, considering the constitutional issues which have been raised, will possibly be further appealed to the Privy Council by either party. STB and the Government have acknowledged in arguments below that the case raises novel issues of constitutional law, and there is no telling what view an appellate court(s) might take of the ruling.

*Coalition to Protect Clifton Bay (“STB”) and Zachary Hampton Bacon v. (1) The Hon. Frederick A. Mitchell, (2) The Hon. Jerome Fitzgerald and (3) The Hon. Attorney-General [2016/PUB/con/00016].*

30. The current litigation being brought by STB, as well as the several complaints which they make, must be viewed through this lens. It arose out of certain disclosures made during the course of Parliamentary proceedings which called into question the source of funding of STB, and questioned whether some $8 million of funding, while channeled ostensibly for environmental purposes, was being used to fund political activities, in violation of STB’s status as a non-profit charitable organization. The case itself turned on issues of whether the disclosure of the contents of emails of persons associated with STB violated any constitutional rights of those persons, and on the other hand whether the absolute right of free speech which protected parliamentary debate on matters of public interest could be impeached by way of any legal action.

*The Parliamentary committee to investigate a breach of privilege*

31. Another misrepresentation by the Petitioners are the references to the State having convened a special committee “with the explicit aim of incarcerating Save The Bays members” for possible contempt of Parliament. Petitioner Smith, in particular, who has long experience and knowledge of constitutional law, well knows that this is a misrepresentation of the factual and legal position in respect of this matter.

32. Firstly, the Resolution authorizing the standing Parliamentary committee on privilege to consider whether there were any breaches of parliamentary privilege connected to this matter was adopted without any negative votes by the House of Assembly. Although the Government has the majority of members in the House, Members of Parliament not aligned with the Government supported the resolution [[17]](#footnote-19)

33. Secondly, House committees are constitutionally under the control of the House of Assembly (as represented by the Speaker) and not the Executive. These committees are constituted so as to achieve a political balance in their membership.[[18]](#footnote-20) The Government cannot be presumed to know the specific basis on which the Speaker advocated the postponement of the inquiry of the parliamentary committee into the STB matter (as reported in the newspaper article reference in the Petitioner’s supplemental submissions, *fn*. 18) or whether the Speaker was even aware of the Petition to the Commission. However, the relationship between Parliament and the Courts under the constitutional system and principles that pertains in The Bahamas has always been one of respect for and non-intervention in their respective constitutional roles—a principle that both the Government and STB affirmed in arguments before the Court in the litigation brought by STB.

34. Thirdly, the Petitioners describe these hearings as “extra-judicial” to connote some form of illegality or impropriety. In fact, such parliamentary hearings are authorized by the Constitution and by the laws of The Bahamas, and are in effect no different from the Committee hearings which may be conducted by Senate and House committees in the US constitutional context, or Parliamentary committees in the United Kingdom.

35. Finally, the suggestion that this is a tactic that might be used “in an effort to jail STB members” is also factually and legally incorrect. The powers of these committees are investigatory only, and while they have the power to recommend that persons be cited for contempt for breach of parliamentary privilege, only the House of Assembly as a collective body can cite or possibly commit anyone for contempt. In any event, in light of Bahamian constitutional law and jurisprudence, is not entirely clear that the House itself has any summary penal jurisdiction.[[19]](#footnote-21) In fact, since independence (1973), no person has even been cited for contempt in The Bahamas by a House or Senate committee, and no one has been committed.

**SECTION III:**

**Allegations Made by Petitioners and Government’s Submissions in Response**

36. Below, we have grouped the various allegations contained in the initial submission made by the Petitioners into five charges. Where relevant, they have been amplified by allegations made in the further information provided to the Commission. We deal with them in seriatim, and provide our response based on the information available to the Government and as a result of investigations conducted by the relevant law enforcement agencies.

Allegation 1

*“Over the past 18 months, members of STB (Save The Bays) have been subjected to a steadily escalating campaign of harassment, intimidation and threats of prosecution or summary incarceration; a campaign carried out by both official and unofficial agents of the State . . . . Despite repeated reports to the authorities, including an instance in which two individuals admitted to having been hired to kill certain defenders, local law enforcement has repeatedly failed to act [p. 3 – 4].”*

37.      The Government will address the allegation relating to STB being subjected to a campaign of harassment and intimidation later down in its response, as these allegations emanate from and are connected to the so-called “hate rallies”. Generally, the investigations carried out by law enforcement agencies found no basis to believe that the State or any of its agents carried out or were involved in a campaign of harassment or intimidation. In any event, to the extent that the Petitioners attribute any of these acts or threats of prosecution or summary incarceration to “official or unofficial agents” of the State, they have not identified who these agents are. Neither have these unnamed alleged perpetrators been disclosed to Police officials (even on a confidential basis) to assist their investigations. Petitioners have offered only broad, unsubstantiated allegations, which cannot be the basis for a credible law enforcement finding of culpability. The Government reassures the Commission that in the event that the alleged perpetrators are revealed to the Police the matter will be investigated immediately and fully and if evidence permits, persons will be prosecuted to the full extent of the law.

*Threats of prosecution or summary incarceration*

38. The Petitioners allege that they have been subjected to threats of prosecution or summary prosecution. However, they fail to identify a single incident where the State or an agent of the State has specifically threatened any of the Petitioners with prosecution or incarceration. The incident seemingly relied on (as appears from a newspapers article cited in support) is a statement made by the Minister of Foreign Affairs, in which the latter said: “*If Mr. Smith [Fred Smith] takes any action to offend the privileges of members of Parliament, like he proposes in his latest releases, where he threatens the MP for Tall Pines, there are consequences which can flow from that. One of them is that an offender can be held in contempt of Parliament and find himself faced with imprisonment.”*

39. This was in response to a media statement by Mr. Smith that he would seek to have any MP who continued to reveal information about STB in Parliament committed for contempt, urging them to make the Statements outside of Parliament, and indicating that if they still “*remain cowards*" and continue to do it in Parliament “*he will still hunt them down and seek to have them committed for contempt*”.[[20]](#footnote-22)

40. As can be seen, Minister Mitchell was simply describing the state of the law relating to parliamentary privilege in response to Mr. Smith’s statement, and this was not a specific threat of prosecution and/or incarceration of anyone.

*Allegation of failure of local law enforcement to act, despite repeated complaints*

41. The representation that the local law enforcement failed to take any action to act on complaints, including the allegations relating to possible contract killings is knowingly false. Further, it is a grievous insult to the professionalism of the officers of the Royal Bahamas Police Force, who have always and continue to carry out their public duties without regard to the personalities or politics.

*The alleged ‘murder for hire’ plot*

42. Not only did the police conduct an investigation into this matter, but the investigation was publicly announced, and therefore it is impossible for the Petitioners to represent to the Commission that nothing was done. It is also important to note that the police investigation was initiated based on reports which surfaced in the media. It remains the case that, to date, none of the Petitioners has made a formal criminal complaint in respect of this matter. A brief synopsis of what has been reported by the police as a result of their investigations is below. (As this matter concerns a pending investigation, only so much information as is necessary to demonstrate that an investigation was carried out and the major steps taken by the Police is revealed.)

 43. On 11 March 2016, the Commissioner of Police held a press conference at Police Headquarters announcing that the Force was commencing an investigation into matters which had been reported in the main daily newspapers relating to an alleged “murder for hire” plot, said to involve unnamed operatives associated with Peter Nygard and persons associated with Save The Bays.[[21]](#footnote-23) The media reports were based on material which was disclosed in a civil action filed by Fred Smith and several of the other petitioners against Keod Smith and Peter Nygard seeking a permanent (and interlocutory injunction) in respect of various torts allegedly committed by the defendants.[[22]](#footnote-24) Interestingly, the Petitioners posted all of the affidavits and materials (including alleged undercover recordings of the said plot) on a publicly accessible website and, as explained, this is how the matter came to the attention of the police. At the press conference, persons were invited to come forward to make a criminal complaint.

44. Notwithstanding the lack of a formal complaint, the Police undertook an investigation into the matter, which included conducting interviews with many persons who were either named or said to be connected to the matter, as well as receiving additional materials from such persons and/or their lawyers. As part of the investigation, both individuals said to be at the centre of the plot (Livingston “Toggie” Bullard) and Wisler “Bobo” Davilma) were arrested by the police on 30 March 2016 and questioned with regard to the alleged plot. The Police have confirmed that (contrary to the representation in *allegation 1* above) neither Bullard nor Davilma ever admitted to having been hired to kill any persons associated with STB (or anyone for that matter) when they were questioned by Police.

45. Both men were released on the 1 April 2016, and no charges were filed, although the Police have kept the matter open. What is clear from the preliminary conclusions by the Police however, is as follows: (i) there was no evidence (or insufficient evidence) for the Police to lay charges against any of these persons; (ii) no one came forward to make any criminal complaint against any of these persons during the course of the investigations; (iii) the “criminal” allegations mirrored the civil allegations before the court, and which are under active consideration by the Supreme Court; (iv) the said individuals appeared to have connections to and were apparently working both sides (i.e., the Nygard and Bacon camp) for money, with little capacity or intent to harm anyone.

46. In fact, the saga of “Toggie” and “Bobo” made the rounds of the newspaper cartoonists as bumbling scam artists and “self-proclaimed criminals” seeking to exploit the rivalry between two wealthy individuals for personal gain.

*The civil action: Frederick Smith QC et. al.-v- Peter Nygard et al. (CLE/gen/00329).*

47. It is important for the Commission to be aware, as indicated above, that the complaints by the Petitioners in respect of a concerted campaign to cause damage, terrify and intimidate them and facilitate violent assaults and hate rallies, as well as the alleged plot to murder Fred Smith, Louis Bacon and others, were raised in the context of a civil action in which the plaintiffs seek, among other reliefs, damages for various alleged torts. These include assault, battery, false imprisonment, conspiracy to injure, and/or the tort of harassment, and/or the intentional infliction of harm and/or willfully infringing the plaintiffs’ rights to personal safety. No criminal complaint has ever been filed by any of the Petitioners who have demonstrated their free and unfettered access to the Courts.

48. Further, the Supreme Court is seized of this action, and the Court has apparently set February 2017 to hear several applications in relation to the matter. These include an application by the defendants to strike out the writ on the grounds that it lacks any or sufficient particulars to substantiate allegations of intimidation and conspiracy to murder Fred Smith and Bacon. Importantly, the domestic court seized with this matter (in fact the same Judge who heard the matter involving STB) has not been persuaded that there was any urgency which would justify the plaintiffs’ request for an interlocutory injunction in respect of the alleged threats of harm.

*The alleged intimidation and harassment via public rallies*

49. The Petitioners are also aware that the Police took action to investigate the complaints in respect of the “hate-rallies” and it is a misrepresentation to the Commission to suggest otherwise. As indicated to the Commission, the Petitioners did submit letters dated 27 February 2015, 5 May 2015 and 24 August 2015 to the Commissioner of Police, complaining of alleged criminal threats, intimidation and harassment via public protest against them, which allegedly occurred at events held on the 14 July 2014 and 6 December 2014. (A redacted version of one of these letters was also sent to the Attorney-General, also calling for action and seeking legislative response to the alleged “hate rallies”, which was responded to, as indicated below.)

50. On 24 March 2015, several of the Petitioners[[23]](#footnote-25) came to Police Headquarters where they met with Snr. Assistant Commissioner of Police (ACP) Mr. Steven Seymour. They made an oral complaint, and ACP Seymour undertook to review the complaint and have the matter investigated. That very day, a criminal investigation was launched into the matter, and the intelligence branches of the Force also commenced an undercover investigation to attempt to identify the alleged perpetrators and any directing minds behind the alleged acts.

51. Further, on the 8 May 2016, a bundle of documents was delivered to the Office of the Commissioner of Police from Callenders and Co. (the law firm of which Petitioner Smith is the managing partner) and signed by Petitioner Smith. These documents included statements from Diane Phillips and Petitioners Joseph Darville, Romauld Ferreira and Franciso Nunez regarding the alleged hate rallies and again indicating that they were in fear of their lives. In addition, it contained photographs and a CD-rom with recordings of the demonstrations of the 14 July 2014 and 6 December 2014. Also included were suggested minor charges under the Penal Code, *inter alia*, which the Police concluded would have been statute barred at the time (to the extent that they could be preferred against anyone).[[24]](#footnote-26)

52. On 8 May 2015, the Commissioner of Police responded to Mr. Frederick Smith, QC, advising that all of the concerns of the Petitioners were duly noted and that all alleged infringements of the criminal code would be taken seriously and be investigated (see copy of letter at **Appendix 5**).

53. The Police have confirmed that on 14 July 2014 and 6 December 2014 there were public rallies/demonstrations by persons either supporting a pro-Nygard or STB campaign. According to the police, while at different times attitudes and points of view conflicted between the various sides, no one was arrested nor any charges filed against anyone, as persons complied with all instructions given by the Police. In this regard, it should be noted that all public demonstrations require the organizers to have a permit from the Police, and these events are monitored by the Police.

54. That the Police were present and monitoring the rallies is indicated in the Petitioners’ submission to the IACHR, which cites an instance in which the Bahamas Police Force stepped in to help ensure the safety of the STB demonstrators. (Letter of 27 February 2015 from Frederick M. Smith to Mr. Ellison Greenslade, p. 8).

*Attorney-General’s Response to Fred Smith’s letter on “hate rallies”*

55. As indicated, Petitioner Smith also sent a letter to the Hon. Attorney General, dated 17 April 2015, in respect of the matters raised in the letters to the Commissioner alleging “hate” rallies and urging the Government to adopt legislation to deal with the issue. The Attorney-General responded by letter dated 21 May 2015 (**Appendix 6**, indicating, *inter alia*, that the Government did not support such activities, affirming that police authorities would investigate and referred to the Government’s obligations under international law which clearly evinced an intention to denounce all such activities.

56. Although the entire text of the AG’s response is included in the supporting documents, it is instructive to lift a few excerpts, particularly in light of the allegations by the Petitioners that the Government was apathetic to their concerns:

**“Firstly, and this is a matter of which you would be well aware, the Government of The Bahamas does not in any way support or tolerate any kind of activity that would promote public disorder or interfere with the rights of others, and in particular condemns any activities which might incite discrimination, hostility or violence towards any person or group.**

**To the extent that any of the conduct of which you complain might be construed as conducing to any of these ends, the Government regards them as antithetical and repugnant to the values of Bahamian society and constitutional democracy. Consistent with our laws and having due respect for the freedom of speech and assembly, the relevant authorities will take such action as in necessary to investigate and follow up on the allegations and issues which you have raised.**

**[A]ny possible infractions of the law in respect of public order will be investigated, and you have written under separate cover to the Commission of Police in this regard. Of course, it is a matter for the police, based on their investigation and assessment of the matter to determine whether there are any cogent grounds and evidence to justify pursuing any prosecutions…**

**It should also be stated here—a point that would resonate with you as an ardent defender of human rights—that the rights and freedom of speech and association are essential to the functioning of a democratic society and a balance must be struck between the exercise of those rights and the rights and reputation of others, which at the end of the day is a matter for the Courts. Therefore, one must also respect the rights of private persons who might hold a contrary view on various matters, to engage in legitimate protest, subject to maintaining the balance referred to above.”**

57. Having regard to the foregoing, the Petitioners’ claim to the Commission that the State was only responsive to their complaints or took efforts to investigate subsequent to the complaint to the IA Commission and in light of the international scrutiny brought to bear (p. 9 of further information), is a misrepresentation of the facts. The fact that the Commission excerpts and apparently endorses the Petitioners’ denunciation of the Government’s alleged inaction (paragraph 7 of the Resolution) is further support for the Government’s case that it should have been heard and for review of the measures which have been granted.

Allegation 2

*Fred Smith “has been physically attacked by employees of a politically connected developer and subjected to hostile and xenophobic slurs during several hate rallies which were allowed to proceed with impunity by the authorities [p. 4]”.*

58.  The allegation that Petitioner Smith has been physically attacked by employees of a politically connected developer appears to be an oblique reference to an incident in 2013 in which Fred Smith is alleged to have interposed himself at a public beach where Keod Smith (no relation), along with workers, were carrying out repairs to public infrastructure. Fred Smith is alleged to have had an altercation with Keod Smith and/or workers at that beach.

59. In fact, there is no clear evidence that Petitioner Smith was attacked. Based on their initial investigations of the matter, the Police charged Fred Smith with “intentionally and unlawfully causing harm” to one of the workers, in that he is alleged to have rolled over the foot of one of the workers while leaving the scene. Keod Smith was also charged with “unlawfully assaulting Fred Smith” and causing damage to a vehicle being driven by Fred Smith. (See charge sheets at **Appendix 7**). And so at the very least, it is unclear as to whether or not Fred Smith was attacked or provoked a situation in which he was also an aggressor.

 60. No legal determination was ever made of the matter, as on 14 March 2014, the AG entered *nolle prosecuii* in respect of the charges against both men in the Magistrate’s court. The two men left the court smiling and shaking hands, with a friendly chiding from the magistrate to each of them to “Go your way and sin no more.” [[25]](#footnote-27)

*The “hate rallies”*

61. As already indicated (and see paragraph 2 of the AG’s response), although Petitioner Smith has characterized these rallies as “hate rallies”, these were public expressions of the right to free speech which the Police found did not violate any criminal laws. Neither were there any other acts of public disorder or any threats or public obscenity which arose from these rallies. Even if the content of some of the placards and alleged slurs might be considered distasteful, these cannot be ascribed to the State or agents of the State. To the extent that the Petitioners felt any of these public expressions contravened any civil rights, they were free to institute legal action to vindicate those rights, and in some cases they have done so.

Allegation 3

*Some members of the STB have fled the country, having received information from credible sources in law enforcement that their detention and prosecution on highly questionable charges was imminent and that the likelihood of harm or death while in custody is extremely high [p. 4].”  “Over the last three days, trusted sources in law enforcement have affirmed that the danger is imminent, and that plans may involve the arbitrary detention of defenders in order to subject them to serious harm or murder while in custody [p. 6].”  “Given the information received by the group, it is considered very likely that [group members who left the country] will be intercepted and detained upon re-entry into the country at the beginning of next week, or targeted for harm soon after re-entry [p. 7].”*

*“Sources sympathetic to STB’s work, both those within the PLP party and/or government and those with close relations to Peter Nygard, have warned that plans were afoot to cause serious harm or death to STB members, in particular Fred Smith” [p. 3, of Petitioners’ Further Information]*

*“On Friday August 19 2016 STB director Fred Smith received urgent advice from separate sources closely connected with the PLP government that he should immediately leave the Bahamas or risk being detained by elements of law enforcement working closely with Peter Nygard and Keod Smith” [p. 3 of Further Information;similar threat said to be repeated on 23 September 2016, p. 4]*

62. The Government and the agencies of the State, as indicated below, have been unable to properly investigate the recent allegations based on alleged tips/advice from obscure and unidentified sources allegedly warning Petitioner Smith (and others) that they were in any form of danger (see section on recent investigative initiatives below). It is also important for the Commission to note that these new allegations of clandestine plots to cause serious harm or death to Fred Smith or other members of the STB or intercept them during transit and which allegedly forced him (or them) to flee the country only came to the attention of the Bahamian authorities after they were made to the Commission. Thus, although the Petitioners are complaining that is only their complaint before the IA Commission which triggered investigative action—which has been proven to be false—in fact it was not until the 29 September 2016 that the new complaints were brought to the attention of the relevant authorities.

63. The Government again wishes to reassure the Commission that this matter was investigated and based on investigation and enquiries conducted by law enforcement agencies, there is nothing to substantiate that Fred Smith or any of the other petitioners have had to flee the Bahamas, and certainly none of the Petitioners has encountered any difficulties or issues with returning.

64. The Government wishes to reassure the Commission that international travel by the Petitioners has been frequent, and they have returned to the country uniformly without incident. Petitioner Kirkland Bodie is reportedly married to a Cuban national and he has either sought (or was seeking prior to these events), permanent residence in Cuba for economic reasons.  He is believed to reside in Cuba.  According to data captured by the Immigration Border Control Management System, since June of 2016 Mr. Bodie has made six trips abroad, returning to the Bahamas from his most recent trip on 29 October 2016. He has not made any reports to the Police within that period to suggest that any of these trips were made under duress as a result of reports or threats of harm to him or any members of his family.

65. Petitioner Ferreira is also a known FNM supporter who has been nominated by that party to run as a candidate in the next general election.[[26]](#footnote-28) As an attorney, television personality, and a political candidate, Petitioner Ferreira continues to be involved in direct contact with any number of lay people amongst the public from day to day. Since June 2016, Mr. Ferreira has made two trips abroad, most recently returning on 5 November 2016. He has not made any reports to the Police to suggest that any of these trips were made under duress as a result of reports or threats of harm to him on any members of his family.

66. Petitioner Joseph Darville resides freely in Grand Bahama, is a highly visible member of the community and a highly respected civic leader nationally. Notwithstanding his frequent criticism of the Government, he has received numerous awards for outstanding service and achievement in teaching, communication, and citizenship, including the Commonwealth of the Bahamas Silver Jubilee Award. Reports show that Mr. Darville has made four trips abroad since 18 May 2016, returning most recently on 5 September 2016. He has not made any reports to the Police during this period to suggest that any of these trips were made under duress as a result of reports or threats of harm to him or any members of his family.

67. Public records show that Petitioner Nunez has travelled abroad three since 10 September 2016, most recently returning to the Bahamas on 6 November 2016. One of these trips was to Trinidad and Tobago for a UNHCR-sponsored conference on migration, as disclosed in a public statement he made in connection with this trip.[[27]](#footnote-29) He has not made any reports to the Police to suggest that any of these trips were made under duress as a result of reports or threats of harm to him or any members of his family.

68. Petitioner Smith is a leading member of the Bahamas Bar, and has a very active practice, appearing in Courts in both Freeport, Grand Bahama (where he resides) and in Nassau, New Providence, on a regular and weekly basis. Additionally, hardly a week goes by when he is not in the media in connection with his multiplicity of litigation or speaking out on some other issue. Records show that since 29 July 2016, Petitioner Smith has travelled abroad six times, most recently returning to the Bahamas on 8 November 2016, the same day Government received notice of the grant of precautionary measures. By the 10 November 2016 he was already in the media championing the “ruling” as a vindication of activists’ cries for anti-harassment laws, and stating that: “This judgment by the OAS Human Rights Commission stands as an international indictment of The Bahamas government…”. [[28]](#footnote-30)

69. As indicated, Petitioner Smith has not provided the authorities with any sources or basis on which the Police might investigate whether there is any credibility to these claims.

 Allegation 4

*Credible information has also come to light that plans are in motion to cause certain members of the group, in particular legal director Fred Smith, physical harm or even death. [p. 4]”  “Individuals acting on behalf of [ a] land developer 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 [p. 6]”.*

70.      The Police, having investigated this claim, found no evidence of such action.  The Police Commissioner has indicated that if the Petitioners cooperate, the Police would be able to further investigate this matter. So far, the Petitioners have still not responded to the invitation by the Police to be interviewed and provide information to facilitate the police investigation.

Allegation 5

*“Credible information has also surfaced that there have been efforts to target family members of defenders who are viewed as major obstacles to the State’s political objectives.  These sources have provided STB detailed evidence regarding these plans, however, the group insists this must remain confidential in order to ensure the safety of sources [p. 7].”*

71.       Once again, these are broad, sensational allegations that are not supported by any facts. In fact, there have never been any allegations of any threats or any form of risk to any of the family members of any member of STB or “defenders” (whatever this term is intended to mean). Why any of the family members of STB would be an obstacle to the “state’s political objective” (again these are not specified or known) begs explanation. Further, it is unhelpful for the Petitioners to allege they alone have access to detailed plans of harm, but are unwilling to share them with proper law enforcement officials. This unwillingness to cooperate negates the Petitioners’ allegations.

**Recent investigations**

72. As adverted to above, in addition to the investigation undertaken by the police in 2015 in response to the letters of complaint and other material submitted to the Police, the police have also taken steps to investigate the recent complaints. On 29 September 2016, when the police was informed that a complaint had been made to the IA Commission that the lives of the Petitioners were threatened and that one or more of them had had fled The Bahamas as a result, the Police Force immediately recorded the complaint in the Police computer system and assigned the case #: 1-16-079597 (see **Appendix 8**). A chief superintendent of police was assigned to investigate the matter, and efforts were made to contact the named complainants and interview them, with little success.

73. What is telling is that, despite alleging grave threats on their lives, the Petitioners did not see the necessity of meeting with police to discuss the allegations they made with the Commission. The excuse that they have proffered—the need to protect the safety of sources—rings hollow, when by their own statement they have indicated that some of the informants were “*trusted* sources in law enforcement” (see allegation 4). In fact, the Government suspects that now that the Petitioners have accomplished what Mr. Smith has described as “the international indictment of the Bahamas”, they will never follow up with or cooperate with the police with respect to the allegations.

**SECTION IV:**

**Failure of the Petitioners to satisfy requirements of “gravity”, “urgency” and “irreparable harm”.**

74. As indicated in its Rules and practice, the Commission applies a *prima facie* standard in assessing whether the criteria of “gravity”, “urgency” and “irreparable harm” have been satisfied before granting precautionary measures.[[29]](#footnote-31) The Government understands the inexact nature of the application of these criteria, but submits that in the present circumstances these have not been met, and the Government respectfully submits that the Commission compounded the failure by coming to a conclusion without considering any submissions from The Bahamas.

75. The Government notes in particular, that in analyzing the requirement of “gravity” and “urgency” the Commission will consider the specific context, which includes matters such as a “history of act of aggression against persons in similar situations”, and matters related to the country context, such as “the efficacy of the judicial system”, etc. There is no history of any act of aggression being carried out in The Bahamas against human rights or environmental defenders, and there has always been free and open debate on these matters. Further, The Bahamas has a strong and independent judicial system, with the Privy Council at the apex, which is fully capable of protecting civil rights and punishing persons who offend the criminal law.

76. With regard to the gravity, the Commission seemed to accept *ipso facto* a linkage between the Government and the alleged acts, simply because of the Petitioners’ claim that there were such linkages owing to the alleged political connections. Secondly, the Governments notes that the Commission (paragraph 11), as opposed to looking at objective contextual matters, basically supplied its own context, i.e., “the Commission observes that the elements submitted are consistent with information received concerning the situation of human rights defenders in the Bahamas.” It referred to the Commission’s own *Report on Criminalization of the Work of Human Rights Defenders of 2015*, where the IACHR noted that “[…] human rights defenders in The Bahamas face a hostile environment that endangers their safety and work.” This conclusion was based on limited information in respect of an isolated incident—the Commission concluded that “human rights defenders in the Bahamas face a hostile environment that endangers their safety and work” based on alleged threats by the Minister of Foreign affairs to “initiate criminal proceedings for defamation and sedition” against Fred Smith and Joe Darville of GBHRA.

77. The Constitution of The Bahamas vests in the Attorney General the power to initiate and discontinue prosecutions. The Government again points to its noble record of respect for the Rule of Law, encouragement and protection of free and open expression in the media in reassuring the Commission that the Government has not taken a position to “initiate criminal proceedings for defamation and sedition” against Fred Smith and Joe Darville of GBHRA.

78. In the assessing the urgency of the complaints, the Commission places much stock on the observation that “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” (paragraph 13). This has now been proven to be patently false, and it is clear that the Commission acted on incomplete and deliberately falsified information.

79. As to the issue of irreparable harm, the Government accepts that this criteria would be met if there were any credible threat of harm to any of the Petitioners. But there is no credible basis for their allegations, only unsubstantiated allegations with innominate sources.

80. The Government reiterates that many of the same allegations are before the Supreme Court of the Bahamas, and the Court has not seen the necessity to grant any interlocutory injunctions (the domestic law equivalent of precautionary or protective measures in international law). In the premises, the Government regrets that the Commission was able to come to the conclusion that it did.

**SECTION V:**

 **Conclusion**

81.The Government wishes to assure the Commission that its takes all allegations of violations of human rights seriously, as do the local law enforcement agencies who have the professional responsibility of investigating them and ensuring that any perpetrators are punished. As the facts have now emerged in this present matter, it is clear that there was not the apathy and lack of response which the Petitioners allege—and the Commission must note seriously this lack of candour on the part of the Petitioners. Neither does there appear to be any credible basis to hold that the Petitioners are at risk of any imminent danger; the unwillingness of the Petitioners to meet with police and substantiate their allegations does not really add credibility to their allegations.

82. In light of this, the Government respectfully requests an urgent consultation with the Commission for the purpose of reviewing the precautionary measures, with a view to their being lifted.

83. Further, the Government wishes to re-assure the Commission that it will take the necessary action by the State agencies to continue to monitor the situation with respect to the Petitioners and take pre-emptive action if required to not only ensure their safety, but to continue to provide an environment in which they are free to continue their work as environmental/human rights advocates. In this regard, the Royal Bahamas Police Force and other law enforcement agencies, as well as the judicial and legal system of the State, stand ready to protect the lives and human rights of the Petitioners, as they routinely do in respect of all persons within the territorial limits of The Bahamas.

**APPENDICES**

1. Diplomatic Note No.105/2016, dated 3rd October 2016, from Permanent Mission of the Commonwealth of The Bahamas to the Inter-American Commission.
2. Diplomatic Note No.132/2016, dated 14th November 2016, from Permanent Mission of the Commonwealth of The Bahamas to the Inter-American Commission.
3. Diplomatic Note No.133/2016, dated 14th November 2016, from the Permanent Mission of the Commonwealth of The Bahamas to the Inter-American Commission.
4. Affidavit of Frederick R.M. Smith, Q.C., sworn 7 December 2009 and filed before the Privy Council in Appeal No. 74 of 2006 (*Save Guana Cay Reef Association Ltd. et. al. v. Wendell Major et. al*).
5. Letter dated 8 May 2015 from Commissioner of Police to Fred Smith, QC
6. Letter of Hon. Attorney-General to Fred Smith QC, dated 21 May 2015 (draft copy).
7. Police Charge Sheets against Frederick Smith QC and Keod Smith.
8. Computer record of entry of Case #: 1-16-079597 in respect of complaint made by STB members to the IACHR.

**List of News Paper Articles**

1. Announcement on STB webpage dated 14 November 204: “Fred Smith QC Appointed Save The Bays Chairman”.

2. Candia Dames, *The Nassau Guardian*, 21 March 2016.

3. *The Bahama Journal*, 4 August 2016, “MPs Reject Judge’s Ruling”.

4. Sancheska Brown, *The Tribune,* 15 March 2016, “Police Quiz PM over Nygard”, available at: <http://www.tribune242.m/new2016/mar/15/>.

5. Rashad Rolle, *The Tribune*, 14 March 2014, “Charges Dropped Against Fred Smith and Keod Smith”.

6. Keesha Bethel, *The Nassau Guardian*, 25 May 2016, “FNM names four more candidates.”

7. *TheBahamasWeekly.com*, 20 October 2016, “Call for immigration detention following UN conference (by GBHRA).

8. Ava Turnquest, *The Tribune*, 10 November 2016, “Activists ‘vindicated’ by ruling on harassment”, available at: <<http://www.tribune242.com/news/2016/nov/10/activists-vindicated-ruling>-harassment/?news

1. Fred Smith, QC, Joseph Darville, Romauld Ferreira, Franciso Nunez and Kirkland Bodie. [↑](#footnote-ref-3)
2. In the advisory opinion on Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal, the ICJ held that: “…General principles of law and the judicial character of the Court do require that, even in advisory proceedings, the interested parties should each have an opportunity, and on a basis of equality, to submit all the elements relevant to the questions which have been referred to the review tribunal.” (*Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal [Advisory Opinion]* para. 36). [↑](#footnote-ref-4)
3. See the recommendation in this regard for reviews of the grant of precautionary measures by the Commission without the participation of the state in the “Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System For Consideration by the Permanent Council” (OEA/Ser.G, GT/SIDH-13/11 rev. 2, 13 December 2011 (pg. 10). [↑](#footnote-ref-5)
4. IACHR, Precautionary Measures 259-02, Regarding the Situation of the Detainees at Guantanamo Bay (United States), Resolution of October 28, 2005. [↑](#footnote-ref-6)
5. Rule 25 of the Commission’s Rules; and see IACHR “Second Report on the Situation of Human Rights Defenders in the Americas”, OEA/Ser.L/V/II, Doc 66, 31 December 2011 (pg. 190). [↑](#footnote-ref-7)
6. Announcement on STB webpage dated 14 November 204: “Fred Smith QC Appointed Save The Bays Chairman”. [↑](#footnote-ref-8)
7. For example, Mr. Smith has also brought judicial review challenges on behalf of other NGO environmental groups which he has been active in organizing (Save the Guana Cay Reef Association Ltd. and Responsible Development for Abaco Ltd.). [↑](#footnote-ref-9)
8. *R. v. (1) The Rt. Hon. Perry Christie, Prime Minister, (2) The Hon. Philip B. Davis, Deputy Prime Minister, (3) The Hon. Glenys Hanna Martin, Minister of Transport and Aviation; (4) Michael Major, Director of Physical Planning, (5) The Town Planning Committee, (6) Peter Nygard, (Respondents), ex parte (1) Coalition to Protect Clifton Bay (Applicant)* [2013/pub/JR/00012]. Since the institution of this action, the Coalition has filed an additional 3 actions, basically arising out the same factual circumstances connected with proposed developments on the private property of Peter Nygard. [↑](#footnote-ref-10)
9. These matter range from applications relating to rights of way between their respective properties, actions for defamation and libel, actions for various alleged torts, etc., which have also been instituted in foreign jurisdictions (e.g., New York, California, and Canada). [↑](#footnote-ref-11)
10. See, for example, Candia Dames, *The Nassau Guardian*, 21 March 2016, where Louis Bacon admitted to making political donations to the PLP in the 2007 electoral cycle and to the FNM in the 2012 election cycle. [↑](#footnote-ref-12)
11. The Constitutional Commission set up by the Government in 2012 to make recommendation for constitutional reform has recommended the reform of electoral laws to regulate campaign financing, and the Government is giving consideration to such reforms. [↑](#footnote-ref-13)
12. See article at fn. 10. [↑](#footnote-ref-14)
13. Para. 13 of Affidavit of Frederick R.M. Smith, Q.C., sworn 7 December 2009 and filed before the Privy Council in Appeal No. 74 of 2006 (*Save Guana Cay Reef Association Ltd. et. al. v. Wendell Major et. al*). [↑](#footnote-ref-15)
14. Adrian Gibson, weblogbahamas.com, “Fred Smith’s decision to Run will liven up 2017 election.” [↑](#footnote-ref-16)
15. In the Bahamas, appointment as Queen’s Counsel remains a prerogative order granted by the State, and is not controlled by any independent legal body (see *Maurice Glinton v. The Right Hon. Hubert Ingraham, et. al*., 2009/Pub/JRV/00046). [↑](#footnote-ref-17)
16. In this regard, it should be appreciated that despite the nomenclature, the “Supreme Court” is really only the first level court, and there are two appellate courts above it (Court of Appeal and Her Majesty’s Privy Council in the United Kingdom). [↑](#footnote-ref-18)
17. *The Bahama Journal*, 4 August 2016, “MPs Reject Judge’s Ruling”. [↑](#footnote-ref-19)
18. For example, the current Committee on Privileges of the House of Assembly is composed of two PLP Members (one of whom is the Chairman), two FNM Members, and one independent Member. [↑](#footnote-ref-20)
19. The UK Parliament, on which the powers and privileges of the Parliament of the Bahamas is patterned, has not since the 1800’s exercised the power to commit for contempt, and it is arguable that the particular laws and customs of Parliament which obtain in the UK do not apply to those former colonial territories which are subject to written Constitutions. For example, s. 9(2) of the *Powers and Privileges Act* (Ch. 9), granting powers to the President of the Senate and Speaker of the House, who act on behalf of their respective parliamentary chambers, provides as follows: “Nothing in this section shall be construed as purporting to confer upon the Speaker any power the exercise of which would permit any person to be deprived of his personal liberty save in accordance with the provisions of Article 19 of the Constitution.” [↑](#footnote-ref-21)
20. See the Tribune article referred to at *fn.* 12 of the Petitioners further submissions to the IA Commission. [↑](#footnote-ref-22)
21. See, for example, Sancheska Brown, *The Tribune,* 15 March 2016, “Police Quiz PM over Nygard”, available at: <http://www.tribune242.m/new2016/mar/15/>. [↑](#footnote-ref-23)
22. Frederick RM Smith, QC, Louis M. Bacon, Joseph Darville, Romauld Ferreira, Reverend. C.B. Moss (Plaintiffs) v. Peter Nygard and Keod Smith (Defendants) [CLE/gen/00329, Bahamas Supreme Court]. [↑](#footnote-ref-24)
23. Fred Smith QC, Joseph Darville and Dianne Phillips (the PR Director for STB). [↑](#footnote-ref-25)
24. These suggested charges were mainly public order misdemeanors, which generally have to be instituted within a six month period, as follows: (i) Unlawful Assembly (s. 79 of Penal Code), (ii) Disturbance of lawful assembly (s. 421 of Penal Code) ,(iii) Causing public terror (s. 204 of Penal Code); (iv) Riotous behavior in public place (s. 206 of Penal Code); and (v) Making use of threatening, violent or obscene language (s. 208 of Penal Code). [↑](#footnote-ref-26)
25. See Rashad Rolle, *The Tribune*, 14 March 2014, “Charges Dropped Against Fred Smith and Keod Smith”. [↑](#footnote-ref-27)
26. Keesha Bethel, *The Nassau Guardian*, 25 May 2016, “FNM names four more candidates.” [↑](#footnote-ref-28)
27. TheBahamasWeekly.com, 20 October 2016, “Call for immigration detention following UN conference (by GBHRA). [↑](#footnote-ref-29)
28. Ava Turnquest, *The Tribune*, 10 November 2016, “Activists ‘vindicated’ by ruling on harassment”, available at: <<http://www.tribune242.com/news/2016/nov/10/activists-vindicated-ruling>-harassment/?news>.
 [↑](#footnote-ref-30)
29. See fn. 6, *supra*. [↑](#footnote-ref-31)