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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 57/2021**

Precautionary Measure No. 551-21  
Erica Sheppard regarding the United States of America  
July 29, 2021  
Original: English

**I. INTRODUCTION**

1. On June 15, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Cornell Law School and Kilpatrick Townsend & Stockton LLP (“the applicants”). The application urges the Commission to require that the United States of America (“the State” or “United States”) adopt the necessary measures to protect the rights of Erica Sheppard (“the proposed beneficiary”), who is currently facing the risk of imminent execution in the state of Texas, where she has been held in solitary confinement on death row for 26 years. The request for precautionary measures is linked to petition 1033-21 in which the applicants allege violations of Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article VII (right of the child to special protection), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody) and Article XXVI (right to due process of law and right not to receive cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man (“American Declaration” or “Declaration”).

2. Pursuant to Article 25.5 of its Rules of Procedure, the IACHR requested information from the State on June 21, 2021. The State requested an extension on June 28, which was granted by the IACHR on June 29. Subsequently, the State submitted its observations on July 21, 2021.

3. Having analyzed the submissions of fact and law presented by the parties, the Commission considers that the information submitted demonstrates prima facie that there is a serious and urgent risk of irreparable harm to Ms. Sheppard’s rights to life and personal integrity in accordance with Article 25 of its Rules of Procedure. Moreover, in the event that Ms. Sheppard is executed before the Commission has the opportunity to examine the merits of her petition, any eventual decision would be rendered moot, leading to irreparable harm. Consequently, the Commission requests that the United States of America: a) adopt the necessary measures to protect the life and personal integrity of Erica Sheppard; b) refrain from carrying out the death penalty on Erica Sheppard until the IACHR has had the opportunity to reach a decision on her petition; c) ensure that Erica Sheppard’s detention conditions are consistent with international standards, giving special consideration to her personal conditions; d) provide appropriate accommodations and attention for Erica Sheppard’s physical disabilities, in accordance with the applicable international human rights standards; and, e) agree on the measures to be adopted with the beneficiary and her representatives.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**A. Information provided by the applicants**

4. The proposed beneficiary is currently facing the risk of imminent execution in the state of Texas, United States. She has been held in solitary confinement on death row for over 26 years. According to the applicants, Ms. Sheppard exhausted all domestic remedies available to her on May 24, 2021, meaning that the Government is now likely to set an execution date immediately.

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## 1. The proposed beneficiary's life

5. According to the application, the proposed beneficiary is a survivor of child abuse, domestic violence and multiple rapes. She is also borderline intellectually disabled, with the mental age of a 14-year-old girl.

6. From an early age, Ms. Sheppard's mother hit, whipped and beat her. On an occasion when her mother discovered that the proposed beneficiary had become pregnant at age thirteen, she "beat [Erica] half to death". Also, Ms. Sheppard's mother failed to protect her from sexual abuse committed against her by other caregivers. In this sense, the application states that between the ages of three and five, Erica spent a summer in the care of a babysitter who beat her, while the babysitter's boyfriend repeatedly raped and sexually assaulted her. Ms. Sheppard confided to her mother about the abuse suffered, but she was called a liar. On top of that, one of her mother's partners beat Erica repeatedly. The application states that experts have since diagnosed the proposed beneficiary with post-traumatic stress disorder (PTSD) caused by the prevalence of physical and sexual violence in her early childhood.

7. By the time she was 16, Erica had run away from home more than ten times. In August 1990, after calling the Houston Police Department to seek help in escaping her mother's violence, she was referred to Covenant House –a shelter for homeless and runaway children–. Erica arrived at Covenant House on August 22, 1990, with her infant child. She explained to Covenant House intake workers the violence she suffered at the hands of her mother and in turn, Covenant House notified Texas's Child Protective Services (CPS). However, the applicants argue that none of the State services to whom Erica appealed for help protected her. The Houston Police Department conducted no follow up once they had referred her to Covenant House and CPS failed to investigate her complaint or to follow up with her. Ms. Sheppard was ultimately sent home to her mother after a two-day stay at Covenant House, having determined that, since she was a minor, she could not stay at the shelter without her mother's consent, which her mother refused to give. However, she returned to Covenant House just three months later, on November 6, 1990, after continued abuse from her mother and a new pregnancy. After that, Ms. Sheppard endured two further episodes of sexual assault as a teenager, during one of which she was gang-raped by her classmates from school. By the time she was 19, Erica had been pregnant five times and had three young children.

8. When Ms. Sheppard was 17 years old, she began a romantic relationship with Jerry Bryant Jr. According to the application, Mr. Bryant physically and verbally abused Erica on an almost daily basis. He also routinely raped and threatened to kill Erica. The applicants state that, as a result of the repeated sexual trauma she had suffered, Ms. Sheppard started to experience dissociative states.<sup>1</sup> The proposed beneficiary reported Mr. Bryant's physical abuse to law enforcement on two separate occasions. In August 1992, she called the Houston Police Department and reported that Mr. Bryant had hit her until she lost consciousness. Even though a police officer met with Erica at her mother's house, no further action was taken. On May 25, 1993, nine months after her first plea for police assistance, Erica called the Bay City Police to report a particularly violent episode of abuse committed against her by Mr. Bryant. She was referred to a shelter for abused women, however, the police did not investigate Mr. Bryant nor follow up with Erica.

9. On May 26, 1993, Ms. Sheppard arrived at the Matagorda County Women's Crisis Center (MCWCC) seeking shelter for herself, her 3-year-old son and baby daughter. She was also pregnant at the time. However, after only 9 days, Erica was kicked out of the shelter for having broken curfew, –she had left to visit an abortion clinic and arrived back late–.

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<sup>1</sup> Dissociation is a breakdown or disruption in a person's ability to integrate information and/or experiences. It can manifest as a person's feeling detached, outside their own body, or not present in the moment as an event occurs.

10. The application stresses that various State actors failed to protect Erica from harm and to investigate the violence she faced throughout her lifetime, highlighting that she has never received appropriate and effective remedies as a victim of repeated and longstanding domestic violence. The State failed to investigate Ms. Sheppard's complaints about her mother and Mr. Bryant, and to provide Erica with psychosocial support tailored to her age, gender, race and individual experiences. In fact, two police departments, a judge, and two shelters all let the proposed beneficiary return to places where she alleged she was the victim of violence without adopting any measures to ensure her safety.

## **2. The crime that led to the proposed beneficiary's conviction and death sentence**

11. After being forced out of MCWCC, Ms. Sheppard went to live with her brother in Houston, where she met a friend of his, James Dickerson. On June 30, 1993, while out walking with Erica's infant daughter, Mr. Dickerson and Erica entered the home of Marilyn Sage Meagher, where Mr. Dickerson killed Ms. Meagher. According to Ms. Sheppard, during the offense, Mr. Dickerson repeatedly threatened to kill her and her daughter if she did not comply with his commands.

## **3. Allegations of the proposed beneficiary's failed defense**

12. The application alleges that Ms. Sheppard's defense lawyers were unprepared and incompetent throughout her trial. The State appointed her a lawyer who had never served as lead counsel on a capital murder case before. Her defense failed to argue that she was under duress preceding, during and after the crime. Further, her lawyers neither investigated nor presented readily available mitigating evidence to help provide context for an aggravated capital crime. As a result, the jury never learned about Ms. Sheppard's long history of sexual assault and domestic violence. Additionally, defense counsel neglected to investigate and present evidence of Erica's organic brain damage, PTSD and dissociative disorder resulting from the physical and sexual abuse she endured throughout her life.

13. Ms. Sheppard's defense lawyers failed to call witnesses to testify to the abuse she had suffered in detail and its impact on her mental health. For instance, the proposed beneficiary's grandmother's testimony lasted a matter of minutes and the defense failed to ask about her about Erica's childhood and teenage years and the violence she endured, even though she had known Erica for her entire life. The final witness called by the defense was Dr. Priscilla Ray, a court-appointed psychiatrist, who did not perform a clinical evaluation intended as a medically diagnostic interview. Dr. Ray offered only a vague opinion that Ms. Sheppard was depressed and was unlikely to pose a danger in the future.

14. Moreover, at trial, the prosecution accused Ms. Sheppard of lying about the abuse she suffered. The prosecutor also appealed to negative gender stereotypes frequently applied to Black women, stating: "*Erica Sheppard may be a woman, but she's certainly no lady*". They called her a "jackal" and a "predator", using dehumanizing and racially charged imagery to obtain a death sentence. Lastly, the prosecution called her a bad mother, stating: "*probably the best thing for those children is the fact that Erica Sheppard will not play a role in their upbringing*".

15. According to the application, as a Black woman in the United States, Ms. Sheppard forms part of a group that has been discriminated against historically, especially with regards to the death penalty. The applicants alleged that the proposed beneficiary suffered discrimination in the application of the death penalty against her, noting that the prosecution used a peremptory challenge to remove an African American prospective juror –ensuring that she was tried by a majority-white jury–, as well as the fact that she was prosecuted in Harris County, Texas, a jurisdiction with a long history of racial bias in capital prosecutions.

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#### **4. The proposed beneficiary's conviction and death sentence**

16. Erica Sheppard was sentenced to death on March 3, 1995, when she was only 19 years old.

17. During the sentencing phase of her trial, the prosecution introduced evidence of crimes that Ms. Sheppard was alleged to have committed, but for which she had never been tried nor convicted. Nonetheless, this evidence was presented as an aggravating factor for the jury to consider in determining whether Ms. Sheppard posed a continuing threat to society and therefore, warranted the application of a death sentence.

18. Following her conviction, the proposed beneficiary filed a writ of habeas corpus in the Federal District Court for the Southern District of Texas arguing that her trial lawyers were grossly ineffective and that the use of unadjudicated offenses to secure her death sentence violated the U.S. Constitution. She further argued that her right to equal protection was violated since the prosecution excluded African Americans from her jury on pretextual grounds. Both the Federal District Court and the U.S. Court of Appeals for the Fifth Circuit denied Ms. Sheppard's claims.

19. The proposed beneficiary petitioned the U.S. Supreme Court for a writ of certiorari on December 21, 2020, however, her petition was denied on May 24, 2021.

#### **5. The proposed beneficiary's current conditions of confinement**

20. After being sentenced to death, Ms. Sheppard was placed in solitary confinement, where she has remained for over 26 years. She has significant brain dysfunction and neurological impairment that affect all brain regions and brain systems (temporal, limbic and frontal), and she suffers from major depression, post-traumatic stress disorder and dissociative disorder. Further, because of a degenerative spinal condition, the proposed beneficiary is unable to stand up and walk without a walker, and thus, is rarely able to leave her cell. The application indicates that while she has had problems walking for over a decade, the Texas Department of Criminal Justice (TDCJ) refused to provide her with a walker until 2014, when her physical condition deteriorated to the point where she needed "assistance from multiple prison guards to stand up". However, Ms. Sheppard is not allowed to keep the walker in her cell, meaning that, to move around in her cell, she is forced to hold on to the walls and furniture as she shuffles from her bed to the toilet. According to the application, throughout the majority of her time in prison, the proposed beneficiary has not had access to proper accommodations for her physical disabilities. In particular, the TDCJ has refused to accommodate her disability by providing her with a wheelchair, despite the fact that herself and medical professionals have made repeated requests that she be provided with one. The applicants argue that "such denials are inhumane and incomprehensible".

21. The applicants state that Ms. Sheppard spends 22 to 24 hours a day in a brick and concrete room the size of a parking space with negligible educational and environmental stimuli. Her cell includes a narrow bed comprised of a metal frame and thin mattress pad. A steel sink and toilet are an arm's length away from her bed. There is a small desk with a metal stool. All the furniture is bolted to the floor and walls. She is not allowed to put pictures, letters, or even a calendar on the wall. The cell has a small window that is barred and covered in a glaze that makes it near impossible to see anything outside. Within her cell, Ms. Sheppard has no access to television, educational opportunities nor consistent recreation. Nearly all of her time is idle, spent attempting to sleep or reading the limited books that she can get from the library or mailed to her.

22. Ms. Sheppard has not been outside for recreation or exercise in over two years. While in theory she is allowed to leave her cell to shower and to participate in one hour of "recreation" each day, the TDCJ's failure to accommodate Ms. Sheppard's disabilities make it impossible for her to engage in any meaningful activity. Since she has not received adequate accommodations for her physical disabilities, Ms. Sheppard is consequently

being denied her right to recreational activities, time outside of her cell and access to prison life. According to the application:

“To leave her cell, a guard must first bring her a walker and handcuff her in the front. They slowly walk to the recreation or shower area. It takes Ms. Sheppard significantly longer to do any activity than an able-bodied person. TDCJ mandates that she be thoroughly strip-searched before and after the activity or shower. Most of the time, because of the excruciating pain and significant extra time it takes her to move, she does not even leave her 60 square foot cell. It is too painful for Ms. Sheppard to walk –with a walker while handcuffed– to the recreational areas. Ms. Sheppard can only manage to leave her cell to shower twice a week and for the occasional in-person visitation. Additionally, showers are only ten minutes long, which is not enough time for Ms. Sheppard to completely wash her hair and body. This means that she usually spends almost every hour of every day trapped in her barren cell.”

23. The application argues that Ms. Sheppard’s prolonged solitary confinement has irreparably harmed not only her physical well-being but also her psychological and emotional well-being. She almost never has access to the touch of another human being. Death row inmates in Texas are not allowed contact visits, so Ms. Sheppard has never touched or held any of her grandchildren. The TDCJ allows death row inmates to have no-contact visits once per week for one hour –reduced from two hours due to the COVID-19 pandemic–. While walking from Ms. Sheppard’s cell to the visitation area would take an able-bodied person approximately five minutes, it takes Erica 45 minutes to an hour. Given that her spinal condition is degenerative, the proposed beneficiary will eventually no longer be able to make those trips without the assistance of a wheelchair. Further, because Ms. Sheppard is physically unable to participate in the voluntary work program, she does not have contact with other women on death row and is denied other privileges that are attached to work.

24. Based on all of the foregoing, the application argues that Ms. Sheppard’s prolonged solitary confinement constitutes torture.

## **6. Execution date**

25. The applicants allege that following the U.S. Supreme Court’s denial of certiorari on May 24, 2021, the Government is now likely to set an execution date immediately.

## **B. Information provided by the State**

26. The United States submitted its observations on July 21, 2021. According to the State, the proposed beneficiary has not demonstrated that her ongoing detention constitutes a serious or urgent situation, nor the likelihood of irreparable harm in relation to her ongoing detention. The State argued that “the time that has elapsed since [the proposed beneficiary’s] conviction of a 1993 murder, during which time she has pursued various avenues of appeal in U.S. courts, is insufficient to substantiate a request for precautionary measures under Article 25 of the Rules”.

27. Moreover, the State argued that the proposed beneficiary has failed to exhaust domestic remedies with respect to the present request for precautionary measures, as well as the accompanying petition, emphasizing the importance of this requirement under international law. The United States also alleged that the precautionary measures request and accompanying petition is an effort by Ms. Sheppard “to use the Commission as a ‘fourth instance’ body to review claims already heard and rejected by U.S. courts” and therefore, should be declined by the IACHR.

28. Lastly, the State reaffirmed “its longstanding position that the Commission lacks the authority to require that States adopt precautionary measures”. In this sense, given that the United States is not a party to the American Convention, the Commission only has the authority to make recommendations with regards to it. Consequently, “should the Commission adopt a precautionary measure resolution in this matter, the United



States would take it under advisement and construe it as recommendatory”. Based on the foregoing, the State submitted that the Commission should refrain from requesting precautionary measures in the present matter.

### III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

29. The precautionary measures mechanism is part of the Commission’s functions of overseeing Member States’ compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States (“OAS”). These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent irreparable harm.

30. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.<sup>2</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.<sup>3</sup> To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.<sup>4</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. Their precautionary nature aims at safeguarding the rights at risk until the request pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.<sup>5</sup> In the process of reaching a decision, and according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “Serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;
- b. “Urgent situation” is determined by means of the information provided and refers to risk of threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and,

<sup>2</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

<sup>3</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

<sup>4</sup> See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

<sup>5</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23 [only in Spanish]; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

- c. “Irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

31. In analyzing these requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. Rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.<sup>6</sup>

32. As a preliminary observation, the Commission considers it necessary to highlight that, according to its mandate, it is not called upon to determine the criminal responsibility of individuals in relation to their alleged commission of crimes or infractions. Additionally, the IACHR does not have the mandate, through the precautionary measures mechanism, to determine whether the State has incurred violations of the American Declaration as a result of the alleged events. In this sense, the Commission reiterates that, with respect to the precautionary measures procedure, it is only called upon to analyze whether the proposed beneficiary is in a situation of seriousness and urgency facing harm of an irreparable nature, as established in Article 25 of its Rules of Procedure. With regards to P-1033-21, which alleges violations of the rights of the proposed beneficiary, the Commission recalls that the analysis of these claims will be carried out in compliance with the specific procedures of its Petition and Case System, in accordance with the relevant provisions of its Statute and Rules of Procedure.

33. The Commission also finds it pertinent to underscore that, while the exhaustion of domestic remedies is indeed a requirement for the admissibility of petitions in accordance with Article 31 of its Rules of Procedure, this same requirement does not apply to the granting of precautionary measures. In this sense, Article 25.6.a of the Rules of Procedure establishes that whether the situation has been brought to the attention of the pertinent authorities should be taken into account when reviewing a request for precautionary measures. However, such actions do not bar the Commission from granting precautionary measures under the consideration of the requirements of seriousness, urgency and irreparable harm. Additionally, as indicated above, the Commission’s competence to grant precautionary measures extends to all Member States of the OAS and does not derive from the American Convention on Human Rights.

34. Additionally, the Inter-American Commission recalls that the death penalty has been subject to strict scrutiny within the inter-American human rights system.<sup>7</sup> While most OAS Member States have abolished the death penalty, a significant minority still hold on to this form of punishment.<sup>8</sup> With regards to the States that maintain the death penalty, there are a series of restrictions and limitations established in regional human rights instruments that States are bound to comply with in accordance with international law.<sup>9</sup> These restrictions and limitations are based on the broad recognition of the right to life as the supreme human right and as the *sine qua non* of the enjoyment of all other rights, thus requiring greater scrutiny to ensure that any deprivation of life resulting from the application of the death penalty complies strictly with the requirements of the applicable

<sup>6</sup> See in this regard: I/A Court H.R. [Matter of Residents of the Communities of the Miskitu Indigenous People of the North Caribbean Coast Region regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13; I/A Court H.R. [Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of precautionary measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

<sup>7</sup> IACHR. [Press Release No. 248/20](#). The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

<sup>8</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 12 & 138; IACHR. [Press Release No. 248/20](#). The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

<sup>9</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 138-39.

inter-American human rights instruments, including the American Declaration.<sup>10</sup> In this sense, the Commission has underlined that the right to due process plays an essential role in guaranteeing the protection of the rights of persons who have been sentenced to death. In order to protect due process guarantees, States have the obligation to ensure the exercise of the right to a fair trial, the strictest compliance with the right to defense, and the right to equality and non-discrimination.<sup>11</sup> In this sense, the Commission highlights that it has granted a number of precautionary measures to individuals on death row, considering both the precautionary and protective dimensions of the precautionary measures mechanism.<sup>12</sup>

35. Moreover, the Commission observes that the proposed beneficiary is an Afro-American woman living with a disability who was sentenced to death when she was 19 years old. In this sense, the Commission notes that this context brings out a case of multiple discrimination based on the intersection of the factors of gender, ethno-racial origin, age and disability. Taking this into account, the IACHR will proceed to analyze the procedural requirements with regards to Ms. Sheppard.

36. In the present matter, the Commission considers that the requirement of seriousness has been fulfilled. With regards to the precautionary dimension, the Commission observes that, according to petition 1033-21 presented by the applicants, the legal proceedings which led to Ms. Sheppard's death sentence allegedly did not comply with her rights to a fair trial and due process of law. In particular, the applicants claim that, during the criminal proceedings, Ms. Sheppard's state appointed lawyers allegedly failed to argue that she was under duress preceding, during and after the crime. Further, her lawyers neither investigated nor presented readily available mitigating evidence to help provide context for an aggravated capital crime. As a result, the jury never learned about her long history of sexual assault and domestic violence. Additionally, defense counsel neglected to investigate and present evidence of Ms. Sheppard's organic brain damage, PTSD and dissociative disorder resulting from the physical and sexual abuse she endured throughout her life. In this regard, while the imposition of the death penalty is not prohibited per se under the American Declaration,<sup>13</sup> the Commission has recognized systematically that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed.<sup>14</sup>

<sup>10</sup> IACHR. [Report No. 210/20](#). Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson (United States of America), August 12, 2020, para. 55; IACHR. [Report No. 200/20](#). Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz (United States of America), August 3, 2020, paras. 44-45; IACHR. [Report No. 211/20](#). Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell (United States of America), August 24, 2020, paras. 72-73.

<sup>11</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 141.

<sup>12</sup> See, in this regard: IACHR. [Resolution 95/2020](#). Precautionary Measure No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020; IACHR. [Resolution 91/2020](#). Precautionary Measure No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020; IACHR. [Resolution 77/2018](#). Precautionary Measure No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. [Resolution 32/2018](#). Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. [Resolution 41/2017](#). Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. [Resolution 21/2017](#). Precautionary Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. [Resolution 14/2017](#). Precautionary Measure No. 241-17. Matter of Victor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. [Resolution 9/2017](#). Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

<sup>13</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 2.

<sup>14</sup> See, in this regard: IACHR. [Resolution 95/2020](#). Precautionary Measure No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020, para. 34; IACHR. [Resolution 91/2020](#). Precautionary Measure No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020, para. 40; IACHR. [Resolution 77/2018](#). Precautionary Measure No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. [Resolution 32/2018](#). Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. [Resolution 41/2017](#). Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October



37. Regarding the protective dimension, the Commission observes that Ms. Sheppard remains on death row in Texas, where she has been held in solitary confinement for over 26 years while awaiting execution. The Commission has stated that “in no instance should solitary confinement of an individual last longer than thirty days”.<sup>15</sup> It has further concluded that “it is widely established in international human rights law that solitary confinement for extended periods of time constitutes at the very least a form of cruel, inhuman or degrading treatment or punishment”.<sup>16</sup> As for the impact that solitary confinement may cause on the rights to life and personal integrity of an individual, the former United Nations Special Rapporteur on Torture, Juan E. Mendez, has stated that:

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.<sup>17</sup>

38. The Commission further emphasizes the serious impacts of long-term deprivation of liberty on death row, known as the “death row phenomenon”, which:

(...) consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death. Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.<sup>18</sup>

39. In this sense, in the case of Russell Bucklew, the IACHR found that “the very fact of spending 20 years on death row is, by any account, excessive and inhuman”.<sup>19</sup> In the case of Víctor Saldaño, the Commission concluded that “holding Víctor Saldaño on death row for more than 20 years in solitary confinement has constituted a form of torture, with severe and irreparable detriment to his personal integrity and, especially, his mental health”.<sup>20</sup>

40. According to the information provided by the applicants, for the last 26 years, Ms. Sheppard has spent “22 to 24 hours a day in a brick and concrete room the size of a parking space with negligible educational and

18, 2017; IACHR. [Resolution 21/2017](#). Precautionary Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. [Resolution 14/2017](#). Precautionary Measure No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. [Resolution 9/2017](#). Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

<sup>15</sup> IACHR. [Report No. 29/20](#). Case 12.865. Merits (Publication). Djamel Ameziane (United States), April 22, 2020, para. 151; IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). OEA/Ser.L/V/II, Doc. 64, December 31, 2011, para. 411.

<sup>16</sup> IACHR. [Report No. 29/20](#). Case 12.865. Merits (Publication). Djamel Ameziane (United States), April 22, 2020, para. 152; IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#). OEA/Ser.L/V/II, Doc. 64, December 31, 2011, para. 413.

<sup>17</sup> United Nations General Assembly. [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#). A/67/279, August 9, 2012, para. 48.

<sup>18</sup> United Nations General Assembly. [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#). A/67/279, August 9, 2012, para. 42; IACHR. [Report No. 24/17](#). Case 12.254. Merits. Víctor Saldaño (United States), March 18, 2017, para. 241; IACHR. [Report No. 200/20](#). Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz (United States of America), August 3, 2020, para. 69; IACHR. [Report No. 210/20](#). Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson (United States of America), August 12, 2020, para. 115; IACHR. [Report No. 211/20](#). Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell (United States of America), August 24, 2020, para. 132; IACHR. [Report No. 71/18](#). Case 12.958. Merits. Russell Bucklew (United States), May 10, 2018, paras. 85-91.

<sup>19</sup> IACHR. [Report No. 71/18](#). Case 12.958. Merits. Russell Bucklew (United States), May 10, 2018, para. 91.

<sup>20</sup> IACHR. [Report No. 24/17](#). Case 12.254. Merits. Víctor Saldaño (United States), March 18, 2017, para. 252.

environmental stimuli". She has not been "outside for recreation or exercise in over two years". Further, due to a degenerative spinal condition, the proposed beneficiary is unable to stand up and walk without a walker. The TDCJ's failure to accommodate Ms. Sheppard's physical disabilities make it impossible for her to engage in any meaningful activity. While the proposed beneficiary has had trouble walking for over ten years, the TDCJ refused to provide her with a walker until 2014. Nevertheless, Ms. Sheppard is not permitted to keep the walker in her cell, meaning that she is forced to hold on to the walls and furniture in order to move from her bed to the toilet. In addition, despite the fact that the proposed beneficiary and medical professionals have repeatedly requested that Ms. Sheppard be provided with a wheelchair, the TDCJ has refused to accommodate these requests.

41. The Commission observes that the United States did not present any specific information regarding the current situation that the proposed beneficiary finds herself in, apart from stating generally that Ms. Sheppard has not demonstrated that her ongoing detention constitutes a serious or urgent situation, nor the likelihood of irreparable harm in relation to her ongoing detention. Specifically, the State did not controvert the proposed beneficiary's alleged conditions of confinement in its report, nor did it make any reference to Ms. Sheppard's physical disabilities. In this sense, the Commission does not have information which indicates that measures are being adopted by domestic courts or administrative authorities to ensure humane detention conditions and to prevent any harm to Ms. Sheppard.

42. In view of these aspects, and without prejudice to the petition presented, the Commission concludes that the rights of Ms. Sheppard are *prima facie* at risk due to the possible execution of the death penalty and its subsequent effects on her petition which is currently under the Commission's analysis, as well as her ongoing conditions of detention in solitary confinement on death row and their impact on her rights to life and personal integrity.

43. The Commission considers that the requirement of urgency has been fulfilled. With regards to the precautionary dimension, according to the information presented by the applicants, on May 24, 2021, the U.S. Supreme Court denied the proposed beneficiary's writ of certiorari. Ms. Sheppard has no further domestic remedies available to her, meaning that an execution date is likely to be set immediately. In view of the foregoing, and before the imminent possibility that the death penalty is applied, the Commission considers it necessary to adopt precautionary measures in order to examine the petition presented by the applicants.

44. In this same sense, regarding the protective dimension, the Commission considers that the risks to the proposed beneficiary's rights require immediate measures given the severe conditions of her detention in solitary confinement on death row and before the possible execution of the death penalty. As stated above, the information presented by the State did not controvert the proposed beneficiary's alleged conditions of confinement, meaning that the IACHR does not have information which indicates that measures are being adopted by domestic courts or administrative authorities to ensure humane detention conditions and to prevent any harm to Ms. Sheppard.

45. The Commission considers that the requirement of irreparability has been fulfilled, insofar as the potential impact on the rights to life and personal integrity of the proposed beneficiary constitutes the maximum situation of irreparability. Further, the IACHR considers that if Ms. Sheppard is executed before the Commission has had the opportunity to evaluate P-1033-21, any eventual decision on the merits of the case would be rendered moot, given that the situation of irreparable harm would already have materialized.

#### **IV. BENEFICIARY**

46. The Commission declares that the beneficiary of this precautionary measure is Erica Sheppard, who is duly identified in this proceeding.

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## V. DECISION

47. The Inter-American Commission on Human Rights concludes that the present matter meets prima facie the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the IACHR requests that the United States of America:

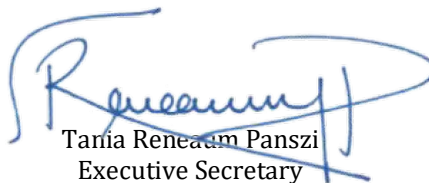
- a) adopt the necessary measures to protect the life and personal integrity of Erica Sheppard;
- b) refrain from carrying out the death penalty on Erica Sheppard until the IACHR has had the opportunity to reach a decision on her petition;
- c) ensure that Erica Sheppard's detention conditions are consistent with international standards, giving special consideration to her personal conditions;
- d) provide appropriate accommodations and attention for Erica Sheppard's physical disabilities, in accordance with the applicable international human rights standards; and,
- e) agree on the measures to be adopted with the beneficiary and her representatives.

48. The Commission requests the United States of America to inform, within a period of 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update such information periodically.

49. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute prejudgment of any violation of the rights protected in the applicable instruments.

50. The Commission instructs its Executive Secretariat to notify the United States of America and the applicants of this resolution.

51. Approved on July 29, 2021, by: Antonia Urrejola Noguera, President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; and, Joel Hernández García; members of the IACHR.

  
Tamia Reneaum Panszi  
Executive Secretary