

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, Denny Baptiste, Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolai, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester v. Trinidad and Tobago
Doc. Type:	Order
Decided by:	President: Hernan Salgado-Pesantes; Judges: Antonio A. Cancado Trindade; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated:	25 May 1999
Citation:	James v. Trinidad and Tobago, Order (IACtHR, 25 May 1999)
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HAVING SEEN:

1. With respect to the Provisional Measures adopted by the Inter-American Court of Human Rights (hereinafter “the Court”) on 29 August 1998 in favour of eight persons sentenced to death in the Republic of Trinidad and Tobago (hereinafter “the State” or “Trinidad and Tobago,”) on whose behalf petitions were submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission:”)

a. The Order of the Court of 29 August 1998, in which it decided:

1. To ratify the Orders of the President of the Inter-American Court of Human Rights of June 29, July 13 and July 22, 1998.

2. To order Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste so as not to hinder the processing of their cases before the Inter-American system.

3. To require the State of Trinidad and Tobago to report every fifteen days, beginning on September 1, 1998, on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste, and to require the Inter-American Commission on Human Rights to send its observations on these reports to the Inter-American Court of Human Rights within two days of their receipt.

4. To require the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste.

b. The note of Trinidad and Tobago of 1 September 1998, in which the State asserted that “the Court does not have jurisdiction [...] to take any steps or decide upon any measures that will frustrate the implementation of a lawfully imposed sentence of death in Trinidad and Tobago” and further declared that it would not “be consulting with the Commission or the Court any further in these matters.”

c. The Annual Report of the Court to the General Assembly of the Organisation of American States for the year 1998, in which, pursuant to its obligations under Article 65 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention,”) it indicated that Trinidad and Tobago had not complied with its Orders in the instant matter, and requested that the General Assembly urge the State to comply with the said Orders.

d. The communication of the State of 5 February 1999, concerning the situation of Anthony Briggs, requesting the Court to “confirm” that its Order of 29 August 1998 (supra 1.a) was “discharged insofar as it relates to [him].”

e. The communication of the Commission of 11 February 1999, informing the Court of developments concerning the circumstances of Wencesalus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Haniff Hilaire, Denny Baptiste and Darrin Roger Thomas.

f. The communication of 3 May 1999, received in the Secretariat of the Court (hereinafter “the Secretariat”) on 7 May 1999, in which the Commission presented information on the most recent decisions of the Judicial Committee of the Privy Council*, the State’s final Court of Appeal, and on developments concerning the circumstances of the petitioners. In the said communication, the Commission informed that, in the Case of Anthony Briggs, pursuant to Article 51 of the Convention, it issued Report No. 44/99 on 9 March 1999, along with its conclusions and recommendations, and required the State to provide a response to the offer of friendly settlement of the matter within 30 days. The Commission also noted that the State had rejected its recommendations on the matter on 16 April 1999, declaring that “the law should take its course.” Finally, the Commission indicated that it had decided to publish the said document No. 44/99 in its Annual Report for 1998.

g. The communication of the State of 20 May 1999, in which it requested that the Court “confirm that [its] Order of August 29th, 1998, concerning the imposition of provisional measures is now discharged insofar as it relates to [Mr.] Briggs.”

h. The note of the Secretariat of 20 May 1999, in which it requested the Commission to submit, within the following 24 hours, an urgent report relating the situation of Anthony Briggs.

i. The note of the Commission of 21 May 1999, in which it requested the Court to grant an extension until Tuesday, 25 May 1999 for the submission of its urgent report on the situation of Anthony Briggs.

j. The note of the Secretariat of 21 May 1999, in which it informed the Commission that the President had granted the extension requested.

k. The urgent report presented by the Commission on 25 May 1999, containing its observations on the request of the State for the lifting of the Provisional Measures adopted in favour of Anthony Briggs.

2. With respect to the Commission's request for amplification of the Provisional Measures in favour of twenty persons, who have also been sentenced to death by the State, and on whose behalf petitions have been submitted to the Commission:

a. The aforementioned communication of the Commission of 3 May 1999, in which it submitted to the Court, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure,") a request for amplification of the Provisional Measures adopted by the Court in the James et al. Cases, to include Wilberforce Bernard (Case No. 12.140), Naresh Boodram and Joey Ramiah (Case No. 12.129), Clarence Charles (Case No. 11.851), Phillip Chotalal (Case No. 12.112), George Constantine (Case No. 11.787), Rodney Davis (Case No. 12.072), Natasha De Leon (Case No. 12.093), Mervyn Edmund (Case No. 12.042), Alfred Frederick (Case No. 12.082), Nigel Mark (Case No. 12.137), Wayne Matthews (Case No. 12.076), Steve Mungroo (Case No. 12.141), Vijay Mungroo (Case No. 12.111), Wilson Prince (Case No. 12.005), Martin Reid (Case No. 12.052), Noel Seepersad (Case No. 12.075), Gangaleen Tahaloo (Case No. 12.073), Keiron Thomas (Case No. 11.853) and Samuel Winchester (Case No. 12.043), whose Cases are currently pending before the Commission.

b. The aforesaid communication, in which the Commission requested the Court to order the Republic of Trinidad and Tobago [to] take the measures necessary to stay the execution of the above named 19 (rectius 20) prisoners until such time as the Commission has had the opportunity to examine and decide their cases in accordance with the norms and procedures specified in the American Convention and its Regulations.

c. The arguments presented by the Commission, to the effect that:

i. there are 19 petitions currently pending before the Commission involving 20 persons subject to "mandatory death sentences" under Trinidad and Tobago law, whose Cases have not been submitted for examination under any other procedure of international investigation or settlement to any other international organisation, and in respect of whom Provisional Measures have not been requested or ordered;

ii. in each Case, the petition states facts that tend to establish a violation of the rights guaranteed under the Convention, and some of them challenge the compatibility of the mandatory nature of the death penalty in Trinidad and Tobago with the State's obligations under the Convention, as well as the adequacy of due process afforded to the persons who have been sentenced to death;

iii. pursuant to Article 29(2) of its Regulations, the Commission requested precautionary measures in each of these Cases, with no response from the State;

iv. the State's denunciation of the Convention, pursuant to Article 78 of the said instrument, becomes effective on or about 26 May 1999;

v. the Commission has not had the opportunity to complete its examination of these complaints and to issue the relevant decisions, and that, given these circumstances, it considers that the execution of the 20 persons would render any eventual decision of the Commission moot, in terms of the efficacy of potential remedies, causing irreparable harm to the persons to whom the sentences and complaints relate.

d. The Order of the President of the Court (hereinafter "the President") of 11 May 1999, in which he adopted urgent measures and required the State

to take all measures necessary to preserve the lives of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the James et al. Cases[;]

[...] to submit an urgent communication to the Inter-American Court of Human Rights by May 20, 1999, on the measures taken in compliance with [the President's] Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights, so that this information [could] be studied by the Court[;]

and decided

[t]o submit the request of the Inter-American Commission on Human Rights, [the President's] Order, and the urgent communication that [had to] be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during its XLIV Regular Session.

e. The communication of Trinidad and Tobago of 19 May 1999, stating that by its Reservation made on ratifying the Convention it recognised “the compulsory jurisdiction of [the Court] only to such extent that recognition is consistent with the relevant sections of [its] Constitution; and provided that any judgement of the Court does not infringe, create or abolish any existing rights or duties of any private citizen,” and claiming that the measures requested by the Commission “concern matters falling within the Reservation and accordingly, in the absence of any special agreement, [the State] does not recognise the jurisdiction of [the Court] and considers the Order of [its] President of May 11, 1999 ultra vires and void.”

CONSIDERING:

1. With respect to the Provisional Measures adopted by the Court on 29 August 1998:

a. That Trinidad and Tobago has been a State Party to the American Convention since 28 May 1991, and that it accepted the jurisdiction of the Court on the same day.

b. That the State gave notice of its denunciation of the Convention to the Secretary General of the Organisation of American States on 26 May 1998, and that, pursuant to Article 78(1) of the said Convention, the denunciation becomes effective on 26 May 1999.

c. That, pursuant to Article 78(2) of the American Convention, the denunciation does not have the effect of releasing the State from its obligations with respect to acts occurring prior to the effective date of denunciation which may constitute a violation of the said Convention.

d. That the State has not complied with the obligation to submit periodic reports every fifteen days on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste, as required by the Order of the Court of 29 August 1999. (supra 1.a, para.3)

e. That neither the State nor the Commission has informed the Court immediately and sufficiently, in the terms required by its Order of 29 August 1999, of “any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas.” (supra, 1.a, para.4)

2. With respect to the Commission's request for amplification of the Provisional Measures in favour of twenty persons:

a. That Article 63(2) of the Convention provides:

[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

b. That pursuant to Article 25 (1) of the Rules of Procedure:

[a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.

c. That the aforementioned Order of the President of 11 May 1999 was issued in conformity with the provisions of the Convention and the Rules of Procedure and the information presented in the matter.

d. That, even though the Commission has not completed its consideration of the Cases referred in the Commission's request, it has informed the Court that "in each of these cases, the petition states facts that tend to establish a violation of the rights guaranteed under the Convention."

e. That the Cases included in the Request for amplification have not been submitted to the Court and the consideration of the issues at hand is, therefore, based upon the State's procedural obligations as a Party to the American Convention, rather than on the merits of each Case. Therefore, the Court will study the request of the Commission in the light of the elements to be taken into account in conformity with Article 63(2) of the Convention, that is, the existence of a situation of extreme gravity and urgency and the necessity to avoid irreparable damage to persons.

f. That the information presented by the Commission provides grounds for the Court to conclude that a situation of "extreme gravity and urgency" exists, making it imperative to order the State to adopt, without delay, the Provisional Measures necessary to preserve the life and physical integrity of the alleged victims.

g. That the States Parties to the Convention should comply in good faith (*pacta sunt servanda*) with all of the provisions of the Convention, including those relative to the operation of the two supervisory organs of the Inter-American system; and, that in view of the Convention's fundamental objective of guaranteeing the effective protection of human rights (Articles 1(1), 2, 51 and 63(2)), States Parties must refrain from taking actions that may frustrate the *restitutio in integrum* of the rights of the alleged victims.

h. That Article 29 of the American Convention provides that:

[n]o provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognised in this Convention or to restrict them to a greater extent than is provided for herein.

i. That, should the State execute the alleged victims, it would create an irremediable situation incompatible with the object and purpose of the Convention, would amount to a

disavowal of the authority of the Commission, and would adversely affect the very essence of the Inter-American system.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure,

DECIDES:

1. With respect to the Provisional Measures adopted by the Court on 29 August 1998:

a. To maintain the Provisional Measures ordered by the Inter-American Court of Human Rights on 29 August 1998, in favour of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste. With respect to Anthony Briggs, to maintain the Provisional Measures ordered in his favour until such time as the Court, having previously considered the reports concerning the present status of his Case, issues a decision on this matter.

b. To urge the State of Trinidad and Tobago to comply with the Order of the Court of 29 August 1998, and henceforth report every fifteen days on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste, and to require the Inter-American Commission on Human Rights to send its observations on these reports to the Inter-American Court of Human Rights within two days of their receipt.

c. To urge the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste.

2. With respect to the Commission's request for amplification of the Provisional Measures in favour of 20 persons:

a. To ratify the Order of the President of the Inter-American Court of Human Rights of 11 May 1999.

b. To order the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, so as not to hinder the processing of their Cases before the Inter-American system.

c. To require the State of Trinidad and Tobago to include in the fortnightly Reports to which reference is made in operative paragraph 1.b of this Order, information on the status of the appeals and scheduled executions of Wilberforce Bernard, Naresh Boodram, Joey Ramiah,

Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, and to require the Inter-American Commission on Human Rights to include its remarks on this information in its observations.

d. To require the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester.

Judges Cañado Trindade and de Roux-Rengifo informed the Court of their Concurrent Opinions, which shall be attached to this Order.

Hernán Salgado-Pesantes
President

Antônio A. Cañado Trindade
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary