

**ORDER OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 14, 2005**

**EXPANSION OF PROVISIONAL MEASURES REQUESTED BY
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING THE STATE OF BARBADOS**

CASE OF BOYCE *ET AL.* VS. BARBADOS

HAVING REGARD TO:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") of September 17, 2004 regarding the State of Barbados (hereinafter "the State" or "Barbados"), in which the President required the State, *inter alia*, "to adopt, without delay, all of the necessary measures to preserve the life and physical integrity of Lennox Boyce and Jeffrey Joseph, so as not to hinder the processing of their cases before the Inter-American system."
2. The Order of the Inter-American Court of November 25, 2004, in which the Tribunal decided, *inter alia*, "[t]o ratify the President's Order of September 17, 2004 [...] and to require the State to adopt without delay all necessary measures to comply with that Order."
3. The communication of December 3, 2004, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") advised that "the conservatory orders of the Barbadian courts remain in force", staying the executions of Messrs. Boyce and Joseph while their constitutional challenge was resolved before the High Court of Barbados.
4. The communication of December 16, 2004, in which Barbados submitted a report in response to the Court's Order of November 25, 2004. The State informed the Court, *inter alia*, that "the alleged victims Lennox Boyce and Jeffrey Joseph remain incarcerated in the Glendairy Prision, in Barbados, West Indies, and have not been executed." Furthermore, Barbados stated that "she is not averse to receiving a decision from the Court regarding the compatibility of her laws with the Inter-American system of human rights"; however, "she cannot delay the execution of the sentences of the Petitioners beyond the time period specifically provided for in the case of *Pratt v. Attorney-General for Jamaica* [...] and all other subsequent relevant decisions such as to cause a breach of the Constitution of Barbados."
5. The communication of December 20, 2004, in which the representatives of the beneficiaries of the present measures (hereinafter "the representatives") confirmed that the aforementioned conservatory orders staying the executions of Messrs. Boyce and Joseph remained in force, "pending the determination of the constitutional case of *Lennox Boyce and Jeffrey Joseph v. The Attorney General and Others*". According to the representatives, at the conclusion of a November 15, 2004

hearing, a justice of the High Court of Barbados reserved judgment, which delayed a decision from being reached.

6. The communication of December 21, 2004, in which the Secretariat of the Court (hereinafter "the Secretariat"), following the instructions of the President, respectfully reminded the State of the provisions of the Court's Order of November 25, 2004, which held, *inter alia*, that "if the State were to execute the alleged victims, this would lead to an irreparable situation, as well as constitute conduct incompatible with the object and purpose of the [American] Convention [on Human Rights]." The Secretariat further observed that, pursuant to the terms of said Order, "States are required to comply in good faith with their treaty obligations (*pacta sunt servanda*)," and "[provisional] measures ordered by [...] this Tribunal by virtue of the provisions of Article 63(2) of the Convention have an obligatory character."

7. The communication of January 12, 2005, in which the representatives submitted observations on the report of the State, in response to the Court's Order of November 25, 2004. In said observations, the representatives remarked that "to execute the Petitioners whilst their applications are pending before the Inter-American Human Rights System would constitute conduct incompatible with the object and purpose of the American Convention [...] and contrary to domestic law." With regard to domestic law in Barbados, the representatives argued that, in light of relevant precedents, "the domestic courts must [...] intervene by way of [a] Conservatory Order in support of precautionary and provisional measures pending the consideration of individual cases, until the final resolution of those cases has been made known."

8. The communication of January 21, 2005, in which the Inter-American Commission submitted observations on the report of the State, in response to the Court's Order of November 25, 2004. In said observations, the Commission stated that "the Court is only obliged to take cognizance of and construe the obligations of the State under the [American] Convention, wh[ose] obligations cannot be superseded or displaced by the State's domestic laws or interpretations thereof." Furthermore, the Commission requested the Court to maintain the present provisional measures.

9. The communication of February 10, 2005, in which the representatives submitted to the Secretariat a copy of the letter sent to Inter-American Commission, which requested "that the Commission seek an Order for Provisional Measures from the Inter-American Court of Human Rights" with regard to Frederick Atkins.

10. The communication of February 11, 2005, in which the Inter-American Commission submitted to the Court, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention") and 25 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), a request that the Court "amplify the provisional measures adopted in the matter of Boyce and Joseph" in favor of Frederick Atkins, with the objective that "Barbados takes all measures necessary to preserve the life and physical integrity of Mr. Atkins so as not to hinder the processing of his case before the Inter-American system."

11. The request of the Commission, which was based upon the following arguments and alleged facts submitted by the petitioners:

- a) Frederick Atkins was convicted on July 21, 1999 of the murder of Sharmaine Hurley and then sentenced to a mandatory death penalty. He has since been on death row at the Glendairy Prison in Barbados;
- b) Barbados is responsible for violating Mr. Atkins' rights, including the rights to life, to due process, and to be protected from inhuman treatment or punishment (Articles 2, 4, 5 and 8 of the American Convention);
- c) the State's mandatory death penalty violates the American Convention's prohibition against the death penalty, save for the most serious offenses, and amounts to a violation of the alleged victim's right not to be deprived arbitrarily of his life;
- d) Mr. Atkins has been or is currently at risk of being exposed to cruel and inhuman treatment or punishment by virtue of the prison conditions in which he is now being held, and the nature itself of the execution – by hanging – which inherently constitutes cruel and inhuman treatment or punishment;
- e) Mr. Atkins has exhausted available domestic remedies. In this regard, his final appeal to the Judicial Committee of the Privy Council was dismissed on November 20, 2002; and
- f) a warrant was read to Mr. Atkins for his execution on Monday, February 14, 2005.

12. The representations made by the Commission to the effect that Mr. Atkins "is under a serious and urgent risk of irreparable damage pending the completion of proceedings before the [I]nter-American human rights system." Further, the Commission stated that "the execution of the alleged victim prior to the completion of the said processes would render any eventual recommendations or judgments moot in terms of the efficacy of potential remedies, such as commutation of [his] death sentence[]." In light of the above, the Commission concluded that the facts alleged constitute a situation of extreme gravity and urgency, justifying the issuing of an order of provisional measures by the Court, pursuant to Article 63(2) of the Convention and Article 25 of the Rules of Procedure. Consequently, the Commission requested that the Court order the State: i) to take "all measures necessary to preserve the life and physical integrity of Frederick Atkins, so as not to hinder the processing of his case before the Inter-American system", and that "said measures include the urgent adoption of all actions necessary to stay the execution scheduled for Monday, 14 February 2005"; and ii) to "inform the Court concerning the measures taken to comply with the present request."

13. The Order of February 11, 2005 issued by the President of the Court, which decided:

1. To require the State to adopt, without delay, all of the necessary measures to preserve the life and physical integrity of Frederick Atkins, so as not to hinder the processing of his case before the Inter-American system.
2. To require the State, pursuant to the Court's Order of November 25, 2004, to maintain all of the necessary measures to preserve the life and physical integrity of

Lennox Boyce and Jeffrey Joseph, so as not to hinder the processing of their cases before the Inter-American system.

3. To require the State to inform the Inter-American Court, within 10 days of the notification of the [...] Order, regarding the steps it has taken in fulfillment of th[e] Order.

4. To require the representatives of the beneficiary of the [...] urgent measures to submit their observations on the State's report within five days of its reception, and to require the Commission to submit its observations on the State's report within seven days of its reception.

5. To require the State, after the submission of its first report, to continue informing the Court every two months regarding the measures it adopts with respect to Messrs. Atkins, Boyce and Joseph, and to require the representatives of the beneficiaries of the present provisional measures and the Commission to submit their observations on those State reports within four and six weeks, respectively, of the reception of such reports.

[...]

14. The communication of February 17, 2005, in which the State submitted a report in response to the President's Order of February 11, 2005 and the Court's Order of November 25, 2004. Barbados informed the Court that "the alleged victims Lennox Boyce, Jeffrey Joseph and Frederick Atkins remain incarcerated in the Glendairy Prison, in Barbados, West Indies, and have not been executed." Furthermore, the State reiterated the terms of its December 16, 2004 letter (*supra* fourth "Having Regard To").

15. The communication of February 25, 2005, in which the Commission submitted its observations on the State's report of February 17, 2005. The Commission indicated that the Court had already ruled that a mandatory death penalty "is in violation of the American Convention". Furthermore, it stated that "it does not appear that there are any legal obligations upon the State to execute the beneficiaries before their cases have been processed by the Inter-American System or that any delays [...] would necessarily constitute a breach of the Barbados constitution." In any event, the Commission emphasized, as it did in previous observations, that "the Court is only obliged to take cognizance of and construe the obligations of the State under the Convention". Finally, the Commission requested the Court to maintain the provisional measures in favor of Lennox Boyce, Jeffrey Joseph and Frederick Atkins.

16. The communication of March 11, 2005, in which the representatives submitted observations on the State's report of February 17, 2005. The representatives stated that Mr. Atkins' death warrant was not withdrawn, but was temporarily stayed in the High Court of Barbados on February 11, 2005, pending the final determination of the constitutional motion for Messrs. Boyce and Joseph, which was before the Court of Appeal of Barbados. They furthermore emphasized that the warrants for the execution of Messrs. Atkins, Boyce and Joseph, although temporarily stayed, "remain live". Finally, the representatives asserted that they were "gravely concerned that the State Party is actively opposing in the domestic courts the very position they have been ordered to adopt by the Inter-American Court of Human Rights, namely a stay of execution until this matter has been finally determined by the Inter-American Commission and Court."

17. The communication of May 9, 2005, in which the Secretariat requested the State to submit, pursuant to the terms of the President's Order of February 11, 2005, a report that details the steps Barbados had taken in fulfillment of said Order. Since the report was due to be presented on April 17, 2005, the State was requested, on the instructions of the Court's President, to submit the information as soon as possible.

18. The communication of May 19, 2005, in which the Inter-American Commission submitted to the Court, pursuant to Articles 63(2) of the American Convention and 25 of the Rules of Procedure, a request that the Court "amplify the provisional measures adopted in the matter of Boyce and Joseph" in favor of Michael Huggins, with the objective that "Barbados takes all measures necessary to preserve the life and physical integrity of Mr. Huggins so as not to hinder the processing of his case before the Inter-American system."

19. The request of the Commission, which was based upon the following arguments and alleged facts submitted by the petitioners:

- a) on July 19, 2001, Michael Huggins was convicted of the murder of Stephen Wharton and then was sentenced to a mandatory death penalty. He has since been on death row at the Glendairy Prison in Barbados;
- b) Barbados is responsible for violating Mr. Huggins' rights, including the rights to life, to due process, and to be protected from inhuman treatment or punishment (Articles 2, 4, 5 and 8 of the American Convention);
- c) the State's mandatory death penalty violates the American Convention's prohibition against the death penalty, save for the most serious offenses, and amounts to a violation of the alleged victim's right not to be deprived arbitrarily of his life;
- d) Mr. Huggins has been or is currently at risk of being exposed to cruel and inhuman treatment or punishment by virtue of the following: the prison conditions in which he is now being held; and the nature itself of the execution – by hanging – which inherently constitutes cruel and inhuman treatment or punishment;
- e) Mr. Huggins has exhausted available domestic remedies. In this regard, his final appeal to the Judicial Committee of the Privy Council was dismissed on January 29, 2004; and
- f) a warrant was read to Mr. Huggins for his execution on Monday, May 23, 2005.

20. The representations made by the Commission to the effect that Mr. Huggins "is under a serious and urgent risk of irreparable damage pending the completion of proceedings before the [I]nter-American human rights system." Further, the Commission stated that "the execution of the alleged victim prior to the completion of the said processes would render any eventual recommendations or judgments moot in terms of the efficacy of potential remedies, such as commutation of [his] death sentence[]." In light of the above, the Commission concluded that the facts alleged constitute a situation of extreme gravity and urgency, justifying the issuing of an order of provisional measures by the Court, pursuant to Article 63(2) of the

Convention and Article 25 of the Rules of Procedure. Consequently, the Commission requested that the Court order the State: i) to take "all measures necessary to preserve the life and physical integrity of Michael Huggins, so as not to hinder the processing of his case before the Inter-American system", and that "said measures include the urgent adoption of all actions necessary to stay the execution scheduled for Monday, 23 May 2005"; and ii) to "inform the Court concerning the measures taken to comply with the present request."

21. The Order of May 20, 2005 issued by the President of the Court, which decided:

1. To require the State to adopt, without delay, all of the necessary measures to preserve the life and physical integrity of Michael Huggins, so as not to hinder the processing of his case before the Inter-American system.
2. To require the State, pursuant to the Court's Order of November 25, 2004 and the President's Order of February 11, 2005, to maintain all of the necessary measures to preserve the life and physical integrity of Lennox Boyce, Jeffrey Joseph, and Frederick Atkins, so as not to hinder the processing of their cases before the Inter-American system.
3. To require the State to inform the Inter-American Court, within 10 days of the notification of the [...] Order, regarding the steps it has taken in fulfillment of th[e] Order.
4. To require the representatives of the beneficiary of the present urgent measures to submit their observations on the State's report within five days of its reception, and to require the Commission to submit its observations on the State's report within seven days of its reception.
5. To require the State, after the submission of its first report, to continue informing the Court every two months regarding the measures it adopts with respect to Messrs. Huggins, Atkins, Boyce and Joseph, and to require the representatives of the beneficiaries of the present provisional measures and the Commission to submit their observations on those State reports within four and six weeks, respectively, of the reception of such reports.

[...]

22. The communication of May 27, 2005, in which the State submitted a report in response to the President's Orders of May 20 and February 11, 2005 and the Court's Order of November 25, 2004. Barbados advised the Tribunal that "the alleged victims Lennox Boyce, Jeffrey Joseph, Frederick Atkins and Michael Huggins remain incarcerated in Barbados, West Indies, and have not been executed." Furthermore, the State once again reiterated the terms of its December 16, 2004 letter (*supra* fourth "Having Regard To").

23. The communication of June 3, 2005, in which the Commission submitted its observations on the State's report of May 27, 2005. In addition to reiterating comments made in its February 25, 2005 submission to the Court (*supra* fifteenth "Having Regard To"), the Commission advised that on May 31, 2005, the Court of Appeal of Barbados commuted the death sentences of Messrs. Boyce and Joseph to life imprisonment. However, the Commission indicated that the State is considering an appeal of said decision to the Caribbean Court of Justice, which possibly could restore the original death sentences. In consequence, the Commission requested the Court to maintain the current provisional measures in favor of Lennox Boyce, Jeffrey Joseph, Frederick Atkins, and Michael Huggins.

WHEREAS:

1. Barbados has been a State Party to the American Convention on Human Rights since November 27, 1982 and recognized the contentious jurisdiction of the Inter-American Court on June 4, 2000.

2. Article 63(2) of the said Convention provides that

[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.

3. Article 25 of the Rules of Procedure stipulates:

1. At 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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. Article 1(1) of the Convention imposes on States Parties the obligation to respect the rights and freedoms set out in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of the said rights and freedoms.

5. As the Court has repeatedly held, it is the responsibility of the State to adopt measures to protect all persons subject to its jurisdiction and this duty is particularly compelling in the case of persons currently the subject of a proceeding before the supervisory organs of the American Convention¹.

6. In light of the well-established principles regarding international state responsibility, whereby States are required to comply in good faith with their treaty obligations (*pacta sunt servanda*), provisional measures ordered by this Tribunal by virtue of the provisions of Article 63(2) of the Convention have an obligatory character. Consequently, Barbados may not invoke the provisions of its domestic law as justification to evade such international commitments. A State Party's treaty obligations, furthermore, are binding upon all of that State's national institutions².

7. The representations made by the Commission (*supra* twelfth and twentieth "Having Regard To") reveal *prima facie* a situation of extreme gravity and urgency,

¹ Cf., *inter alia*, *Case of Comunidad de Paz de San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 17, 2004, sixth "Whereas"; *Case of Comunidades del Jiguamiandó y del Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 17, 2004, sixth "Whereas", and *Case of Boyce and Joseph*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2004, fifth "Whereas".

² Cf. *Case of Loayza-Tamayo*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 3, 2005, fifth "Whereas". *Case of Bámaca-Velásquez*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 3, 2005, fifth "Whereas".

rendering it necessary to avoid irreparable damage to the rights to life and physical integrity of Frederick Atkins and Michael Huggins.

8. If the State were to execute the alleged victims, this would lead to an irreparable situation, as well as constitute conduct incompatible with the object and purpose of the Convention³.

9. In this case the measures mandated are designed to allow the organs of the Inter-American system of human rights protection to evaluate the possible existence of a violation of Articles 2, 4, 5 and 8 of the American Convention.

10. The case under consideration is not before the Court, and the adoption of provisional measures, whose purpose in international human rights law is to protect fundamental human rights by seeking to avoid irreparable damage to persons, does not imply a decision on the merits of the controversy between the petitioners and the State. Upon ordering such measures, the Tribunal is ensuring only that it may faithfully exercise its mandate pursuant to the Convention in cases of extreme gravity and urgency⁴.

11. The Court is aware, as a result of the information provided by the State, the Commission, and the representatives, that Michael Huggins, Frederick Atkins, Lennox Boyce and Jeffrey Joseph have not yet been executed. Furthermore, on May 31, 2005, the Court of Appeal of Barbados commuted the death sentences of Messrs. Boyce and Joseph. However, the Commission indicated that the State is considering an appeal of said decision to the Caribbean Court of Justice, which possibly could restore the original death sentences. Moreover, Messrs. Huggins, Atkins, Boyce and Joseph remain incarcerated in Barbados and the State has asserted that it "cannot delay the execution of the sentences of the Petitioners beyond the time period specifically provided for in the case of *Pratt v. Attorney-General for Jamaica* [...] and all other subsequent relevant decisions such as to cause a breach of the Constitution of Barbados".

12. In due consideration of the above, the Court decides that the measures mandated by the President's Orders of February 11 and May 20, 2005 (*supra*

thirteenth and twenty-first "Having Regard To") must be maintained, and for this reason ratifies said Orders in all of their terms.

³ Cf. *Case of Boyce and Joseph*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2004, ninth "Whereas"; *Case of Raxcacó et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of August 30, 2004, ninth "Whereas"; and *Case of James et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of November 26, 2001, twelfth "Whereas".

⁴ Cf. *Case of Boyce and Joseph*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2004, tenth "Whereas"; *Case of Raxcacó et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of August 30, 2004, eleventh "Whereas"; and *Case of Carlos Nieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 9, 2004, tenth "Whereas".

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Article 63(2) of the American Convention and Article 25 of the Rules of Procedure,

DECIDES:

1. To ratify the President's Orders of February 11 and May 20, 2005 (*supra* thirteenth and twenty-first "Having Regard To") and to require the State to adopt without delay all necessary measures to comply with those Orders.
2. To require the State to inform the Inter-American Court, within 10 days of the notification of the present Order, regarding the steps it has taken in fulfillment of this Order.
3. To require the representatives of the beneficiaries of the instant provisional measures to submit their observations on the State's report within five days of its reception, and to require the Inter-American Commission to submit its observations on the State's report within seven days of its reception.
4. To require the State, after the submission of its first report, to continue informing the Court every two months regarding the measures it adopts, and to require the representatives and the Commission to submit their observations on those State reports within four and six weeks, respectively, of the reception of said reports.
5. To notify the State, the Inter-American Commission, and the representatives of the beneficiaries of the present Order.

Sergio García Ramírez
President

Alirio Abreu Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary