

**ORDER OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 25, 2004***

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

CASE OF BOYCE AND JOSEPH V. BARBADOS

HAVING SEEN:

1. The communication of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of September 17, 2004, in which the Commission submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), in accordance with 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 for the adoption of provisional measures in favor of Lennox Boyce and Jeffrey Joseph of the State of Barbados (hereinafter "the State" or "Barbados"), with the objective that "Barbados take all measures necessary to preserve the lives and physical integrity of these alleged victims so as not to hinder the processing of their cases before the Inter-American system."

2. The arguments of the Commission were based upon the following alleged facts, submitted before it by solicitor Saul Lehrfreund, representative of the beneficiaries:

- a) Lennox Boyce and Jeffrey Joseph were arraigned for the murder of Marquelle Hippolyte on April 10, 1999, and on February 2, 2001 were convicted of the crime and sentenced to a mandatory death penalty. They have since been on death row at the Glendairy Prison in Barbados;
- b) Barbados is responsible for violating the rights of Messrs. Boyce and Joseph, including the rights to life, to due process, and to be protected from inhumane 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 victims' rights not to be deprived arbitrarily of their lives;
- d) Messrs. Boyce and Joseph have been or are currently at risk of being exposed to cruel and inhuman treatment or punishment by virtue of the following: the prison conditions in which they are now being held; the reading of warrants of execution in June 2002 to the alleged victims while appeals were still pending before the Judicial Committee

* Judge Diego García-Sayán informed the Court that, for reasons of *force majeure*, he was unable to be present during the final deliberations and signing of the present Order.

of the Privy Council; and the nature itself of the execution, which is by hanging;

- e) Messrs. Boyce and Joseph have exhausted available domestic remedies; and
- f) warrants were read to Messrs. Boyce and Joseph for their executions on Tuesday, September 21, 2004.

3. The representations made by the Commission to the effect that Messrs. Boyce and Joseph "are under a serious and urgent risk of irreparable damage pending the completion of their proceedings before the Inter-American human rights system." Further, the Commission stated that "the execution of the alleged victims prior to the completion of these processes would render any eventual recommendations or judgments moot in terms of the efficacy of potential remedies, such as commutation of their death sentences." 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, in accordance with Article 63(2) of the Convention. Consequently, the Commission requested that the Court order the State to "take all measures necessary to preserve the lives and physical integrity of Lennox Boyce and Jeffrey Joseph so as not to hinder the processing of their cases before the Inter-American system [...] and inform the [...] Court immediately concerning the measures taken to comply with the present request."

4. The Order of September 17, 2004 issued by the President of the Court (hereinafter "the President"), which decided:

- 1. To require the State 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. To require the State to inform the Inter-American Court of Human Rights, within 10 days of the notification of the present Order, regarding the steps it has taken in fulfillment of [the] Order.
- 3. To require the representatives of the beneficiaries of the present urgent measures to submit their observations to the State's report within five days of its reception, and to require the Commission to submit its observations to 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 of the beneficiaries of the present urgent measures and the Commission to submit their observations to those State reports within four and six weeks, respectively, of the reception of such reports.

[...]

5. The communication of October 11, 2004, in which the Secretariat of the Court (hereinafter "the Secretariat") notified the State that, pursuant to the President's Order of September 17, 2004, it was required to submit, no later than September 27, 2004, a report detailing the action taken in fulfillment of that Order. Following the instructions of the President, the Secretariat requested the State "to present this information as soon as possible".

6. The communication of October 14, 2004, in which the representatives of the beneficiaries advised that "on 17th September 2004, the High Court of Barbados granted Conservatory Orders staying the executions of Mr. Lennox Boyce and Mr.

Jeffrey Joseph.” Further, the representatives confirmed that these Orders “remain[...] in force pending the determination of the constitutional case challenging the reading of the execution warrants”.

7. The communication of November 2, 2004, in which the Secretariat reiterated to the State the terms of the abovementioned Order of September 17, 2004. On the instructions of the President, the Secretariat requested that the State “present [the ordered] information as soon as possible, so that the State’s cooperation in the present case may be evaluated during the Tribunal’s next Ordinary Session, to be held from November 15 to November 26, 2004.”

8. The communication of November 16, 2004, in which the Secretariat, on the instructions of the full Court, requested that the Commission and the representatives of the beneficiaries inform the Court as soon as possible whether the Conservatory Orders staying the executions of Mr. Lennox Boyce and Mr. Jeffrey Joseph remain in force and whether there have been any other developments in the said matter.

9. The communication of November 23, 2004, in which the Commission advised that it was “in the process of making inquiries about the status of the conservatory orders and about any further developments” in the present case. Furthermore, the Commission indicated that it would inform the Court as soon as such information became available.

10. As of the date of this Order the State has failed to submit the report required by the Order of September 17, 2004.

CONSIDERING:

1. That 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. That 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. That Article 25 of the Rules of Procedure of the Court stipulates that:

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. That 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. That, as the Court has repeatedly held, it is the responsibility of the State to adopt measures to protect all persons subject to its jurisdiction¹ and this duty is particularly compelling in the case of persons currently the subject of a proceeding before the supervisory organs of the American Convention².

6. That, 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*), urgent measures ordered by the President of this Tribunal by virtue of the provisions of Article 63(2) of the Convention have an obligatory character. Consequently, Barbados is under the obligation to keep this Tribunal informed regarding the actions it has taken to comply with the Order of the President. The provision of such information is essential in order to permit the Court to evaluate the State's degree of compliance with the said Order.

7. That 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.

8. That the representations made by the Commission in the present case (*supra* second "Having Seen") reveal *prima facie* a situation of extreme gravity and urgency, rendering it necessary to avoid irreparable damage to the right to life and physical integrity of Lennox Boyce and Jeffrey Joseph.

9. 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 Convention³.

10. That 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, this Tribunal is ensuring only that it may faithfully exercise its mandate pursuant to the Convention in cases of extreme gravity and urgency⁴.

¹ Cf. *Case of Raxcacó et al.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 30, 2004, fifth "Considering"; *Case of Carlos Nieto et al.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 9, 2004, fourth "Considering"; and *Case of Sarayaku Indigenous Community.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 6, 2004, fourth "Considering".

² Cf. *Case of Raxcacó et al.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 30, 2004, fifth "Considering"; *Case of Gómez Paquiyaury.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of May 7, 2004, sixth "Considering"; and *Case of Urso Branco Prison.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of April 22, 2004, fifth "Considering".

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

⁴ Cf. *Case of Raxcacó et al.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of August 30, 2004, eleventh "Considering"; *Case of Carlos Nieto et al.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 9, 2004, tenth "Considering"; and *Case of Sarayaku Indigenous Community.* Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 6, 2004, second "Considering".

11. That the Court is aware, as a result of the recent information provided by the representatives of the beneficiaries (*supra* sixth "Having Seen"), that the High Court of Barbados has temporarily stayed the execution of the death warrants with respect to Messrs. Boyce and Joseph. The Tribunal considers this a positive development and a crucial step on the part of the State to protect the fundamental human rights of the individuals in question, as well as to facilitate the processing of their cases in accordance with the requirements of the American Convention.

12. That the State has failed to submit, as of the date of this Order, the report required by the abovementioned Order of September 17, 2004 (*supra* tenth "Having Seen").

13. That as a consequence of the above, the Court considers that the measures mandated by the President's Order of September 17, 2004 (*supra* fourth "Having Seen") must be maintained, and for this reason ratifies the Order in all of its terms.

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 Order of September 17, 2004 (*supra* fourth "Having Seen") and to require the State to adopt without delay all necessary measures to comply with that Order.
2. To require the State to inform the Inter-American Court of Human Rights, 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 present provisional 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.
4. To require the State, after the submission of its first report, to inform the Court every two months regarding the measures it adopts, 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.
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

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary