

OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE  
SUPPLEMENTARY WRITTEN SUBMISSIONS OF THE ALLEGED VICTIMS



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CASE 12.480  
LENNOX BOYCE, JEFFREY JOSEPH, FREDRICK BENJAMIN ATKINS  
AND MICHAEL HUGGINS (BOYCE ET AL.)  
V.  
BARBADOS  
IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

I. INTRODUCTION

1. On June 23, 2006 the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") submitted the present case to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," or "the Court") alleging that the State of Barbados (hereinafter "the State," or "Barbados"), had violated Articles 4 (1) and (2) (Right to Life), 5 (1) and (2) (Right to Humane Treatment), and 8 (Right to a Fair Trial), in conjunction with Article 1 (1) (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") to the detriment of Messrs. Lennox Boyce, Jeffrey Joseph, Fredrick Benjamin Atkins and Michael Huggins (hereinafter "the victims")

2. The victims were convicted of murder and sentenced to death on February 2, 2001 (Messrs Boyce and Joseph), July 21, 1999 (Mr. Atkins), and July 19, 2001 (Mr. Huggins) pursuant to Barbados' Offences Against the Persons Act 1994, which prescribed capital punishment as the mandatory punishment for the crime of murder. As a question of national law, namely a "savings" clause in the Constitution of Barbados, the domestic courts cannot declare these mandatory death sentences to be invalid even though they violate fundamental rights protected under Barbados' Constitution and the American Convention.

3. In addition, during the course of their criminal proceedings and following their convictions, the victims were held in the Glendairy prison in Bridgetown, Barbados, under deplorable conditions and the State read warrants of execution to each of the victims while their complaints were pending before the Inter-American system. Subsequently, on May 31, 2005, the death sentences of Messrs Boyce and Joseph were commuted to life imprisonment by the Barbados Court of Appeal. However, the State appealed this decision to the Caribbean Court of Justice. As reported by the State, on November 8, 2006, the Caribbean Court of Justice dismissed the appeal and, *inter alia*, upheld the commutation of the sentences of Messrs Boyce and Joseph. Reports indicate with respect to Mr. Atkins that he passed away in a hospital in Barbados on October 30, 2005.

4. The present application was notified to the State and the victims on August 18, 2006. On October 18, 2006, the victims filed their brief in which they stated that they "adopt and endorse the arguments set out in the Commission's application,"<sup>1</sup> and advanced additional arguments. Moreover, the victims alleged that "the method of execution of death by hanging violates Articles 5(1) and 5(2) of the Convention, in conjunction with Article 1"<sup>2</sup>

5. On December 18, 2006, the State filed its answer to the application. In its submission, the State objected to the admissibility of the application filed by the Commission on the basis that domestic remedies have not been exhausted. The Commission received the answer to the application on January 22, 2007 and submitted its observations on the preliminary objection filed on February 21, 2007 requesting the Court to dismiss it on the basis that the Commission had decided in Report No. 03/06 of February 28, 2006, that Barbados had "implicitly or tacitly waived any challenge with regard to the exhaustion of remedies" and that this decision should not be reviewed by the Court.

6. On the merits, the State argued *inter alia* that Barbados' capital punishment regime is not contrary to its obligations under the Inter-American system of human rights because: 1) textual, subjective and teleological forms of interpretation of the OAS Charter and the American Convention support its position that the application of the death penalty is restricted, but not prohibited, and that the application of mandatory capital punishment is neither expressly nor implicitly prohibited;<sup>3</sup> 2) there is no evidence of a customary rule of general international law or of a regional or local customary rule that prohibits mandatory capital punishment;<sup>4</sup> and even if such a rule could be proven, Barbados would not be bound by it because of its status as a persistent objector.<sup>5</sup> The State added that capital punishment is limited to the crimes of high treason and murder, and that its domestic system includes a right to appeal for mercy.<sup>6</sup> It also claimed that a death sentence cannot *per se* give rise to a claim of cruel, inhuman or degrading punishment; nor can execution by hanging.<sup>7</sup>

7. After being granted leave by the Court to submit additional written submissions as provided for in Article 39 of the Rules of the Court, on April 6, 2007, the

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<sup>1</sup> Written submissions of the alleged victims, October 18, 2006 [hereinafter "victims brief"], para. 5 at p. 4

<sup>2</sup> Victims brief, para. 1 at p. 2, and paras. 69-80, at pp. 21-24.

<sup>3</sup> Barbados, Submissions of the State of Barbados, December 18, 2006, [hereinafter "answer to the application"], para. 14 at p. 10 and pp. 25-33

<sup>4</sup> Answer to the application, para. 15 at p. 10 and pp. 68-81

<sup>5</sup> Answer to the application, para. 16 at p. 11 and pp. 81-89

<sup>6</sup> Answer to the application, para. 18 at p. 11 and pp. 94-106.

<sup>7</sup> Answer to the application, para. 20 at pp. 11-12 and pp. 113-129.

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victims filed "supplementary written submissions" (hereinafter "supplementary submissions") and an affidavit by Professor Hood on the issue of the practice of prohibiting capital punishment internationally.

8. In their submissions, the victims' representatives addressed two issues raised by the State for the first time in the proceedings;<sup>8</sup>

- (i) the effect of Barbados' reservation in respect of the death penalty;
- (ii) the State's contention that its status as a persistent objector to any prohibition on the mandatory death penalty is relevant to the task this Court is called on to perform.

9. As a general matter, the Commission notes that the State challenges the scope of review by the regional human rights system at a late stage in the proceedings. More specifically, had the State wished to question the scope of review of the questions raised in the present case, any such considerations or objections should have been presented during the preliminary stages of the proceedings before the Commission. Given that the State and the representatives of the victims have briefed these specific issues, the Commission takes this opportunity to present its observations on the foregoing issues and demonstrate that the Court is competent to consider all issues of fact and law presented.

**II. EVEN ASSUMING THAT BARBADOS' RESERVATION RELATING TO ARTICLES 4(4), 4(5) AND (8)(2)(E) OF THE CONVENTION IS FULLY VALID, IT IS NOT RELEVANT TO THE DISPOSITION OF THE CLAIMS RAISED UNDER ARTICLES 4(1), 4(2), 5(1), 5(2), 8(1) AND 1(1) CONCERNING THE MANDATORY NATURE OF THE DEATH PENALTY IMPOSED UPON THE VICTIMS**

10. In its answer to the application, Barbados argued that

When Barbados ratified both the Charter of the Organization of American States and the American Convention on Human Rights it understood its obligations as being those expressed in the texts of the two treaties. In particular, it understood its obligations under Articles 1, 2, 4, 5 and 8 of the American Convention as being clearly established in the text of those articles, as modified by the reservations that Barbados itself attached when ratifying the Convention<sup>9</sup>.

11. The text of the reservation made by Barbados is the following:

In respect of 4(4) the Criminal Code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point in as much as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4).

<sup>8</sup> See appendix E.2 to the application, copy of the file of the proceedings before the Commission

<sup>9</sup> Answer to the application, para. 50 at p.23.

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In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over, or over 70 years of age, may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide, as a minimum guarantee in criminal proceeding, any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide and rape<sup>10</sup>.

12. The State noted that its reservation "made specific reference to Barbados' system of laws, which provides for death by hanging as a penalty for the acts of murder and treason. No objections were made to any of these reservations."<sup>11</sup> The State quoted the Court when it indicated in its *Advisory Opinion on Restrictions to the Death Penalty* that "reservations become a part of the treaty itself" and concluded that "Barbados' obligations under the American Convention must be interpreted as modified by its reservations."<sup>12</sup>

13. In their supplementary submission, the victims allege that, although Barbados argues that "because, at the time of ratification of the Convention, it entered a reservation in respect of certain aspects of its death penalty, there can be no challenge to the mandatory nature of the penalty nor to the method of execution (death by hanging), [...] neither of these factors was expressly reserved within the text of the reservation." The victims added that "the aspects of its death penalty which the State expressly sought to exempt from the application of the Convention are the three expressly mentioned in it and that no reservation was made in respect of the mandatory application of the death penalty." They add that, although death by hanging is mentioned as the method of execution, this is not expressed as being one of the factors in respect of which the reservation is entered. Therefore, they do not accept that Barbados' reservation in respect of the death penalty in any way precludes a finding (i) that its mandatory death penalty is contrary to Articles 4, 5 and 8 of the Convention; or (ii) that its method of application, i.e. death by hanging, is contrary to Article 5. Quoting from the *Advisory Opinion on Restrictions to the Death Penalty*, the victims conclude that:

The text of Barbados' reservation reserves only the three factors set out [in it]. The fact that the text of the reservation, in explaining the context of the three factors to be reserved, makes reference to the method of execution being death by hanging, does not convert such reference into an additional ground of reservation. Such an interpretation would be contrary to article 29 of the Convention [...]<sup>13</sup>.

<sup>10</sup> Answer to the application, para. 50 at pp. 23-24. See also OAS, IACHR, Basic Documents Pertaining To Human Rights In The Inter-American System, OAS/Ser.L/V/II.4 Rev. 12, 31 January 2007, Original: Spanish, p. 53.

<sup>11</sup> Answer to the application, para. 51 at p. 24.

<sup>12</sup> Answer to the application, paras. 52-53 at pp. 24-25.

<sup>13</sup> Supplementary submissions of the alleged victims, April 6, 2007, [hereinafter "supplementary submissions"] p. 8-9.

14. The Commission considers that the arguments put forth by the State in its response to the effect that the reservation it filed at the time of ratification of the American Convention precludes consideration of the mandatory death penalty lack foundation, primarily because the reservation in question refers expressly to provisions not at issue in the present case and has an object and purpose not relevant to its determination.

15. As a point of departure, it will be recalled that Article 75 of the American Convention provides that "this Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969."<sup>14</sup> Article 19 of the Vienna Convention specifies in turn that a ratifying State may not make a reservation that is expressly prohibited by the treaty or that is "incompatible with the object and purpose of the treaty."<sup>15</sup> The Court, for its part, has indicated that "a reservation which was designed to enable a State to suspend any of the non-derogable fundamental rights must be deemed to be incompatible with the object and purpose of the Convention and, consequently, not permitted by it."<sup>16</sup>

16. The Commission does not take a position in the present proceedings on the validity or invalidity or potential scope of application of the reservation entered by Barbados because it considers that the reservation, even if deemed fully valid and accorded the scope set forth in the text, is not pertinent or relevant to the determination of the claims presented in this case.

17. As stated in the object of the application, the Commission has alleged the violation of Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the American Convention. The reservation entered by the State, in contrast, refers textually to Articles 4(4), 4(5) and 8(2)(e). The reservation entered by the State with respect to Article 4(4) refers textually to the question of the application of the death penalty for the crime of treason, and as such is not relevant as a matter of fact or law to the resolution of the present case. That crime is not at issue. The reservation with respect to Article 4(5) refers textually the question of

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<sup>14</sup> Article 2(d) of the Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention"), defines a reservation as any "unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." The effect of a reservation, according to the Article 21(1)(a) of the Vienna Convention, is "to modify with regard to the State making it the provisions of the treaty to which the reservation refers to the extent of the reservation". Therefore, the Court has said that "[a]lthough the provisions concerning reciprocity with respect to reservations are not fully applicable to a human rights treaty such as the Convention, it is clear that reservations become a part of the treaty itself. It is consequently impossible to interpret the treaty correctly, with respect to the reserving State, without interpreting the reservation itself". Advisory Opinion 3/83, para. 45.

<sup>15</sup> The Court has indicated in Advisory Opinion 2/82 that "the reference in Article 75 to the Vienna Convention makes sense only if it is understood as an express authorization designed to enable States to make whatever reservations they deem appropriate, provided the reservations are not incompatible with the object and purpose of the treaty", para. 35.

<sup>16</sup> I/A Court H.R. *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3 [hereinafter "Advisory Opinion 3/83"], para. 61.

the age of the offender, and again, that question is not at issue in the present case. Finally, the reservation entered with respect to Article 8(2)(e) refers to the right to legal counsel, which has not been placed in question.

18. The Commission further notes in this regard that the position it has presented before the Court is that the application of the mandatory death penalty in relation to the facts of the present case constitutes a violation of the right to life, to humane treatment and to due process as provided in Articles 4(1), 4 (2), 5(1), 5(2) and 8(1) of the American Convention in conjunction with Article 1. Even if the reservation were understood to relate to Article 4 in some broader fashion, as the State contends, the Commission sees no basis upon which it could be understood as relating to Articles 5(1), 5(2) and 8(1) of the American Convention as briefed by the Commission in its Application.

19. In conclusion on this point, the Commission considers that independently of the extent to which the reservation entered by Barbados could be understood as valid, it could not be understood as applicable or relevant to the matters requiring resolution in the present case.

**III. THE PRESENT CASE MAY BE FULLY RESOLVED IN ACCORDANCE WITH THE CONVENTIONAL BASIS OF THE SYSTEM, WHICH PROVIDES THE STANDARDS UPON WHICH ACTS AND OMISSIONS ATTRIBUTABLE TO THE STATE MUST BE REVIEWED**

20. Having carefully reviewed the positions of the State and the victims' representatives, the Commission considers that the matters pending before the Court in the present case can and should be fully resolved with reference to the conventional basis for jurisdiction, namely the text of the American Convention, as well as the applicable norms of treaty interpretation. The Commission considers that it is not necessary in the present case to enter into a debate about the scope or effect of customary law regarding the mandatory death penalty because the applicable norms and jurisprudence provide authoritative guidance for the resolution of the matters raised.

21. When addressing the issue of the correct interpretation of the American Convention on Human Rights, it is necessary to use the rules of interpretation provided by international law but keeping in mind the distinct character of human rights treaties, which unlike other kinds of treaties, do not have the purpose of establishing reciprocal rights and obligations between the States parties but rather the recognition of the rights of individuals under their jurisdiction.

22. The basic rules of interpretation provided by international law are those in Article 31 of the Vienna Convention which reflects basic principles of law.<sup>17</sup> These rules are applied regularly by the Court and the Commission, in light of the particularities of

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<sup>17</sup> Cfr. ICJ, Case Concerning The Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide (Bosnia And Herzegovina V. Serbia And Montenegro), Judgment, 26 February 2007, para. 160.

human rights treaties. Article 31 of the Vienna Convention establishes that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." These elements have to be taken into account simultaneously when interpreting a provision.

23. The distinct character of human rights treaties has been recognized by the Court when it established that:

"the object and purpose of the Convention is not the exchange of reciprocal rights between a limited number of States, but the protection of the human rights of all individual human beings within the Americas, irrespective of their nationality"<sup>18</sup>.

24. Moreover, it has emphasized that

modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.<sup>19</sup>

25. Human rights treaties are interpreted in light of that purpose by reference to the *pro persona* or *pro homine* principle, that is, they are interpreted in favor of the individuals whose rights are involved. This has been recognized as a guiding principle by the Court as from the very first matter before it, when it established that "the Convention [must] be interpreted in favor of the individual, who is the object of international protection, as long as such an interpretation does not result in a modification of the system."<sup>20</sup>

26. Article 4 contains no reference to "mandatory" death penalty, either allowing or prohibiting it. Therefore, the Court has interpreted the relevant provisions of this Article according to the rules of interpretation provided by international law and keeping in mind the distinct character of human rights treaties, and concluding that the reference to "arbitrary" in Articles 4(1) of the Convention and the reference to "the most serious crimes" of Article 4(2) of the American Convention renders the kind of mandatory death penalty that exists in Barbados incompatible with such provisions. This is the reasoning that lies beneath the Court's decision in the *Hilaire et al. Case* when it says that the mandatory death penalty in Trinidad and Tobago "prevents the judge from considering the

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<sup>18</sup> I/A Court H.R. *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982*. Series A No. 2 [hereinafter "Advisory Opinion 2/82"] para. 27.

<sup>19</sup> Advisory Opinion 2/82, para. 29.

<sup>20</sup> Viviana Gallardo, Decision of November 13, 1981, para. 16.

basic circumstances in establishing the degree of culpability and individualizing the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different"<sup>21</sup> and "punish[es] crimes that do not exhibit characteristics of utmost seriousness." <sup>22</sup>

27. The Commission further notes that the information provided by the State and the petitioners concerning the existence of custom concerns the extent to which certain States apply the death penalty and/or the mandatory death penalty, and in this regard is fairly narrow in scope. The position put forth by the Commission in the present case takes into account a broad range of circumstances that concern the application of that penalty within the legal regime of Barbados, and what is required under the American Convention not only with respect to the right to life, but also with respect to the rights to humane treatment and due process. The issues of fact and law presented by the Commission in this regard are broader and do not rely on the factual issues in contention in the memorials of the State and representatives.

28. In conclusion on this point, the Commission considers that it is not necessary in the present case to enter into a debate about the scope or effect of customary law regarding the mandatory death penalty because the applicable norms and jurisprudence provide authoritative guidance for the resolution of the matters raised.

#### IV. CONCLUSION

29. As stated in its application, the Commission request the Court to conclude and declare that the State of Barbados is responsible for violations of:

- a) Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the Convention, in conjunction with Article 1(1) of the Convention, relating to the mandatory nature of the death penalty imposed upon the victims;
- b) Articles 5(1) and 5(2) of the Convention, in conjunction with Article 1(1) of the Convention, relating to the victims' conditions of detention and the reading of warrants of execution to the victims;
- c) Article 1(1) of the Convention with respect to the reading of warrants of execution to the victims while their complaints were pending before the inter-American human rights system;
- d) Article 2 of the Convention in relation to section 2 of the Offences Against the Person Act 1994 of Barbados and section 26 of the Constitution

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<sup>21</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 103.

<sup>22</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 106.



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of Barbados, for failing to bring their domestic legislation into compliance with the rights and freedoms protected under the American Convention.

30. As a result of the abovementioned, the Inter-American Commission requests that the Court order the State to:

1. Maintain the commutation of the death sentences of Messrs Boyce and Joseph, and award compensation to them in respect of the remaining violations of their rights under the American Convention as concluded above;
2. Grant Mr. Huggins an effective remedy which includes commutation of sentence in relation to the mandatory death sentence, and compensation in respect of the remaining violations of his rights under the American Convention as concluded above;
3. Grant an effective remedy to the estate or next-of-kin of Mr. Atkins, which includes compensation in respect of the violations of his rights as concluded above;
4. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8;
5. Adopt such legislative or other measures as may be necessary to ensure that the Constitution of Barbados conforms with Article 2 of the American Convention, that is to say, to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice;
6. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which the alleged victims are held comply with the standards of humane treatment mandated by Article 5 of the Convention

Washington, D.C.  
April 25, 2007