

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 14, 2013***

**PROVISIONAL MEASURES REGARDING THE REPUBLIC OF TRINIDAD AND TOBAGO
MATTER OF DOTTIN ET AL.**

HAVING SEEN:

1. The Orders of the President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") of May 27, June 29, July 13 and 22, 1998, and June 19, 1999, as well as the Orders of the Tribunal of June 14 and August 29, 1998; May 25 and 27, and September 25, 1999; August 16 and November 24, 2000; November 26, 2001; September 3, 2002; December 2, 2003; February 28, 2005; and April 3, 2009. In this last Order, the Court decided, *inter alia*:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of June 14, 1998, August 29, 1998, May 25, 1999, May 27, 1999, September 25, 1999, August 16, 2000, November 24, 2000, November 26, 2001, September 3, 2002, December 2, 2003, and February 28, 2005, with respect to Wenceslaus James, Anthony Garcia, Darrin Roger Thomas, Haniff Hilaire, Denny Baptiste, Wilberforce Bernard, Naresh Boodram, 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, Gangadeen Tahaloo, Keiron Thomas, Samuel Winchester, Peter Benjamin, Amir Mowlah, Allan Phillip, Krishendath Seepersad, Narine Sooklal, Mervyn Parris, and Francis Mansingh, and to substitute the examination of the State's obligations as to these thirty-one victims with the applicable assessment within the framework of the supervision of compliance with the *Hilaire, Constantine and Benjamin et al.* Judgment[;]

2. To request the State to maintain the necessary measures to protect the life and physical integrity of Andrew Dottin, Kevin Dial, Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Sheldon Roach, and Takoor Ramcharan for an additional period of at least six months following notice of [the] Order, after which the Court [would] evaluate whether or not to lift them[;]

3. To request the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries to submit by July 3, 2009, updated information regarding the existence and continuation of the situation of extreme gravity and urgency and potential risk of irreparable damage that would warrant maintaining these provisional measures in force[; and]

4. To order the change of name of this matter, which will be known as the "Matter of Dottin *et al.*" [...]

2. The communication of July 6, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") presented the information requested by the Tribunal in the Order of April 3, 2009 (*supra* Having Seen paragraph 1).

* Judge Eduardo Vio Grossi informed the Court that, for reasons of *force majeure*, he could not be present for the deliberation and signing of the present Order.

3. The communications of the Secretariat of the Tribunal of July 10 and September 17, 2009, and March 21 and April 25, 2013, through which the Republic of Trinidad and Tobago (hereinafter, "Trinidad and Tobago" or "the State") and the representatives of the beneficiaries (hereinafter, "the representatives") were asked to submit the information requested in the Order of the Court of April 3, 2009 (*supra* Having Seen paragraph 1). In addition, through the aforementioned communications of March 21 and April 25, 2013, the State and the representatives were asked to present information on the possibility that the death penalties imposed on each of the beneficiaries would be effectively executed, in view of the particular situation of each beneficiary. The State and the representatives did not submit the information requested.

CONSIDERING THAT:

1. The Republic of Trinidad and Tobago was a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") from May 28, 1991, to May 26, 1999, and recognized the contentious jurisdiction of the Court on May 28, 1991.

2. On May 26, 1998, the State notified the Organization of American States of its denunciation of the Convention, which, pursuant to Article 78(1) of said treaty, became effective on May 26, 1999. Nevertheless, in conformity with Article 78(2) of the Convention, "Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in [the] Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation."

3. Article 63(2) of the American Convention states that, "In 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." This provision is, in turn, regulated by Article 27 of the Rules of Procedure of the Court (hereinafter, "the Rules of Procedure")¹ and is obligatory in accordance with a basic principle of international law, supported by international jurisprudence, whereby States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).²

4. In International Human Rights Law, provisional measures are not only preventive in nature, in the sense that they preserve a juridical situation, but they are also essentially protective inasmuch as they seek to safeguard human rights and avoid irreparable damage to persons.³ According to Article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures: a) "extreme gravity"; b) "urgency"; and c) the need "to avoid irreparable damage to persons." In this way, provisional measures become a true jurisdictional guarantee that is preventive in nature.⁴ These three conditions must be present

¹ Rules of Procedure approved by the Court in its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009. Article 27(1) of the Rules of Procedure establishes that: "At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention."

² Cf. *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering para. 6, and *Matter of Castro Rodríguez. Request for Provisional Measures regarding Mexico*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 4.

³ Cf. *The "La Nación" Case. Provisional Measures regarding Costa Rica*. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering para. 4, and *Matter of Castro Rodríguez. Request for Provisional Measures regarding Mexico*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 5.

⁴ Cf. *The "La Nación" Case. Provisional Measures regarding Costa Rica*. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering para. 4, and *Matter of Castro Rodríguez. Request for Provisional*

in all instances in which the Court's intervention is sought. Likewise, the three conditions described must persist for the Court to maintain the protection measures ordered. If one of these conditions is no longer in effect, then the Court must assess the need to continue with the protection ordered.⁵

5. This Tribunal has previously noted that provisional measures are of an exceptional nature and that they refer to a specific temporal situation. Thus, due to their very nature, they cannot be perpetuated indefinitely.⁶ In light of its jurisdiction, in the context of provisional measures, the Court must consider only those arguments that are strictly and directly related to the extreme gravity and urgency of the situation and the necessity to avoid irreparable damage to persons. It is in this manner that, in deciding whether to keep the provisional measures in force, the Tribunal must analyze whether the situation of extreme gravity and urgency that led to the adoption of such measures persists, or whether new circumstances, also extremely grave and urgent, warrant keeping them in force.⁷

A. Continuance of the situation of extreme gravity and urgency that brought about the present provisional measures

6. In the Order of April 3, 2009 (*supra* Having Seen paragraph 1), the Inter-American Court deemed it appropriate to maintain the provisional measures ordered in favor of Andrew Dottin, Kevin Dial, Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Sheldon Roach, and Takoor Ramcharan for an additional period of at least six months. Additionally, to facilitate the assessment of the maintenance of such measures, the Tribunal considered it necessary to request that the State, the representatives, and the Inter-American Commission submit updated information regarding the existence and continuance of the situation of extreme gravity and urgency and the risk of such persons suffering irreparable harm.

7. The Court observes that the State and the representatives did not submit the information required by the Court in the aforementioned Order of April 3, 2009 (*supra* Having Seen paragraph 1), despite having been asked to submit such information on various occasions (*supra* Having Seen paragraph 3). Therefore, in order to evaluate the implementation of the present provisional measures and determine the need to maintain them or, if necessary, to lift them, the Court will analyze the information provided by the Inter-American Commission, as well as information of public knowledge that is available to the parties and the Commission.

B. Information submitted by the Inter-American Commission

8. The Inter-American Commission reported that the death penalties imposed on the beneficiaries Andrew Dottin, Kevin Dial, Arnold Ramlogan, Beemal Ramnarace, Sheldon Roach,

Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 5.

⁵ Cf. *Case of Carpio Nicolle. Provisional Measures regarding Guatemala*. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering para. 14, and *Matter of Millacura Llaipén et al. Provisional Measures regarding Argentina*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 3.

⁶ Cf. *Matter of Clemente Teherán et al. (Zenú Indigenous Community). Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of December 1, 2003, Considering para. 3, and *Matter of Millacura Llaipén et al. Provisional Measures regarding Argentina*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 8.

⁷ Cf. *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering para. 6, and *Matter of Millacura Llaipén et al. Provisional Measures regarding Argentina*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 4.

and Takoor Ramcharan were “commuted to life imprisonment in a judgment [...] by the High Court of Justice of [...] Trinidad and Tobago dated August 15, 2008.” Additionally, regarding the situation of Mr. Balkissoon Roodal, the Commission stated that on November 20, 2003, the Judicial Committee of the Privy Council quashed the death penalty imposed on Mr. Roodal and remitted the matter to the aforementioned High Court of Justice so that it could decide, as a matter of discretion, the sentence to be imposed. The Commission submitted both decisions to the Court.⁸

C. Considerations of the Court

9. The Court recalls that it ordered that the State adopt provisional measures in favor of Andrew Dottin and Kevin Dial on May 27, 1999, and in favor of Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Sheldon Roach, and Takoor Ramcharan on November 26, 2001, in order to prevent the execution of the death penalties imposed on them and in this way, preserve their lives and physical integrity.⁹ In that regard, the Court observes that since 1993, the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland (hereinafter, “the Judicial Committee of the Privy Council,” “the Privy Council,” or “the JCPC”), which functions as the court of appeals of last resort for Trinidad and Tobago,¹⁰ and the High Court of Justice, one of the two courts that make up the Supreme Court of Judicature of Trinidad and Tobago,¹¹ have issued a series of decisions that agree with the decisions of the Inter-American Court, in the sense that the death penalty should not be applied to the aforementioned persons. The Inter-American Court considers it pertinent to now refer to the decisions of the Privy Council and the High Court of Justice.

10. First, the Court observes that in the decision issued on November 2, 1993, in the case *Pratt and Morgan v. The Attorney General for Jamaica and Another*, the Judicial Committee of the Privy Council established that “in any case [in which the death sentence is imposed and] in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute ‘inhuman or degrading punishment or other treatment.’”¹² Similarly, in its 2006 judgment in the case of *Henfield v. Attorney General of the Commonwealth of The Bahamas*, the JCPC explained that “the reason why execution [of a person] following the lapse of a prolonged period of time after sentence of death would constitute inhuman punishment is that the condemned man has suffered the agony of mind of facing the

⁸ Cf. Decision issued by Justice Bereaux on August 15, 2008, in H.C.A. No. 1412 of 2005 (file on provisional measures, volume IV, folios 841-843 and 854-856), and *Balkissoon Roodal v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 18 of 2003, judgment issued by the Judicial Committee of the Privy Council on November 20, 2003 (file on provisional measures, volume IV, folios 857-907). Available at: <http://www.bailii.org/uk/cases/UKPC/2003/78.html>.

⁹ Cf. *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of May 27, 1999, Operative para. 1, and *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of November 26, 2001, Operative para. 2.

¹⁰ Cf. “Role of the JCPC,” Judicial Committee of the Privy Council. Available at: <http://www.jcpc.gov.uk/about/role-of-the-jcpc.html>.

¹¹ The Supreme Court of Judicature of Trinidad and Tobago is composed of the Court of Appeal and the High Court. The Constitution of Trinidad and Tobago provides in Article 99 that: “There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice (hereinafter referred to as ‘the High Court’) and a Court of Appeal with such jurisdiction and powers as conferred on these Courts respectively by this Constitution or any other law.” Cf. “Overview,” Judiciary of the Republic of Trinidad and Tobago. Available at: <http://www.ttlawcourts.org/index.php/supreme-court-27/overview>.

¹² Cf. *Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica)*, Privy Council Appeal No. 10 of 1993, judgment issued by the Judicial Committee of the Privy Council on November 2, 1993, para. 85. Available at: <http://www.bailii.org/uk/cases/UKPC/1993/1.html>.

prospect of execution over that period.”¹³ According to the JCPC, the context of a particular country’s legal system and the periods anticipated within such country for the conclusion of appeals processes should be taken into account when establishing if a particular delay, in its entirety from the time of the imposition of the sentence, constitutes an “inhuman punishment.”¹⁴ Unlike in the Jamaican system, in the Bahamas, there is no possibility of application to the Human Rights Committee of the United Nations, and thus the anticipated period for the conclusion of the appeals process was only two years. Consequently, the Privy Council held that in that case, a total period of delay of three and a half years was “inordinate.”

11. Subsequently, in the judgment issued on November 20, 2003, in the case of *Balkissoon Roodal v. The State* (*supra* Considering paragraph 8), the Privy Council established that the “mandatory sentence of death is inconsistent with the international obligations of Trinidad and Tobago under the [American] Declaration [of the Rights and Duties of Man].” Therefore, the Privy Council quashed the death penalty imposed on Mr. Balkissoon Roodal, beneficiary of the present provisional measures, and remitted the matter to the trial judge to decide, as a matter of discretion, the sentence to be imposed.¹⁵ It should be noted that the JCPC left open the possibility that Mr. Roodal could be sentenced to death once again.

12. However, the following year, the Privy Council reversed its previous position regarding the mandatory death penalty in Trinidad and Tobago in the case of *Matthew v. The State*.¹⁶ Nevertheless, the JCPC considered that those persons who had benefitted from its judgment in the case of *Balkissoon Roodal v. The State* (*supra* Considering paragraphs 8 and 11) had, until that time, the “expectation” that they would have the opportunity for a hearing regarding the imposition of a discretionary sentence. Therefore, the JCPC considered it fair that the death penalties imposed on these persons, including Mr. Roodal, be commuted to sentences of life imprisonment.¹⁷

13. Moreover, the Court observes that as a result of some statements by the Attorney General of the Republic of Trinidad and Tobago before Parliament in 2005, to the effect that the State would do “everything within its power” to carry out the sentences of the persons on death row,¹⁸ on August 15, 2008, Justice Bereaux, of the High Court of Justice, commuted the sentences of death of Andrew Dottin, Kevin Dial, Takoor Ramcharan, Arnold Ramlogan, Beemal Ramnarace, and Sheldon Roach, all of whom are beneficiaries of the present provisional measures, among other persons.¹⁹

¹³ Cf. *Henfield v. Attorney General of the Commonwealth of The Bahamas (Bahamas)*, Privy Council Appeal Nos. 26 y 37 of 1996, judgment issued by the Judicial Committee of the Privy Council on October 14, 1996, para. 9. Available at: <http://www.bailii.org/uk/cases/UKPC/1996/36.html>.

¹⁴ Cf. *Henfield v. Attorney General of the Commonwealth of The Bahamas (Bahamas)*, Privy Council Appeal Nos. 26 y 37 of 1996, judgment issued by the Judicial Committee of the Privy Council on October 14, 1996, paras. 10 and 11. Available at: <http://www.bailii.org/uk/cases/UKPC/1996/36.html>.

¹⁵ Cf. *Balkissoon Roodal v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 18 of 2003, judgment issued by the Judicial Committee of the Privy Council on November 20, 2003, paras. 30-32 and 35 (file on provisional measures, volume IV, folios 857-907). Available at: <http://www.bailii.org/uk/cases/UKPC/2003/78.html>.

¹⁶ Cf. *Matthew v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 12 of 2004, judgment issued by the Judicial Committee of the Privy Council on July 7, 2004, para. 1. Available at: <http://www.bailii.org/uk/cases/UKPC/2004/33.html>.

¹⁷ Cf. *Matthew v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 12 of 2004, judgment issued by the Judicial Committee of the Privy Council on July 7, 2004, paras. 30-33. Available at: <http://www.bailii.org/uk/cases/UKPC/2004/33.html>.

¹⁸ Cf. “In the matter of Section 4 and 5 of the Constitution of the Republic of Trinidad and Tobago Act No. 4 of 1976,” decision of the High Court of Justice of August 5, 2010, H.C.A. No. 1412 of 2005, pages 4 and 5. Available at: http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/rajkumar/2005/hca_05_1412DD5jan2010.pdf.

¹⁹ Cf. Decision issued by Justice Bereaux on August 15, 2008, in H.C.A. No. 1412 of 2005 (file on provisional measures, volume IV, folios 842 and 855).

14. Subsequently, the beneficiaries Andrew Dottin and Kevin Dial participated in an action brought by various people who were on death row at the time the judgment in the *Matthew* case was issued. Through its judgment of January 5, 2010, the High Court of Justice confirmed that their sentences should be commuted to life imprisonment and indicated that after the issuance of the judgments of *Pratt and Morgan* and *Matthew* (*supra* Considering paragraphs 10 and 12), “it was clear”:

(i) that persons on death row after 5 years had elapsed could in most cases not have been executed, (ii) that that period may have been abbreviated to 3 1/2 years if appeals to international human rights tribunals were not available, (iii) that persons [...] on death row as at July 7th[...] 2004[, the date that the judgment in the *Matthew* case was issued,] awaiting execution could not have been executed, (iv) [...] [and], (v) that after the order of [...] Justice Bereaux persons who have had their sentences of death commuted to life imprisonment and who have been removed from death row could not be subject to execution thereafter for the same reasons given in *Matthew* namely - once an expectation is held out to a prisoner and officially communicated to him that he would not be executed, this cannot be resiled from [...].²⁰

15. The Court recalls that it ordered provisional measures in favor of Andrew Dottin, Kevin Dial, Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Sheldon Roach, and Takoor Ramcharan “so as not to hinder the processing of [the beneficiaries’] cases before the Inter-American system for the protection of human rights.”²¹ In that regard, the Court observes that to date, the Inter-American Commission has not submitted the cases of such persons to the Inter-American Court. Thus, in view of the judgments issued by the court of appeals of last resort in Trinidad and Tobago and by one of the courts that make up the Supreme Court of that State, according to which the death sentences imposed on Andrew Dottin, Kevin Dial, Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Sheldon Roach, and Takoor Ramcharan have been commuted, and given the lack of information on the part of the representatives and the State confirming the existence of a situation of extreme gravity and urgency and of risk of such persons suffering irreparable harm to their lives or personal integrity, the Court considers it appropriate to lift the provisional measures ordered in the present matter. It is important to note, in this regard, that all the aforementioned persons had reached the periods of 5 and 3.5 years on death row after which, “in most cases,” they could not be executed, according to the interpretation of the High Court of Justice of the judgments issued by the JCPC in the cases of *Pratt and Morgan* and *Henfield* (*supra* Considering paragraphs 10 and 14).

16. It is not within the Court’s knowledge whether the cases of the aforementioned persons are still being processed before the Inter-American Commission. In this regard, the Court reiterates that the denunciation of the Convention by Trinidad and Tobago does not have the effect of releasing the State from its responsibilities regarding acts that occurred prior to the effective date of said denunciation (*supra* Considering paragraph 2). For this reason, despite the lifting of the provisional measures previously ordered, the State is obligated to guarantee the rights of the aforementioned persons²² in the context of the cases that may be progressing before the Commission. The lifting of the present provisional measures does not prevent, if it becomes necessary, a renewed request for the urgent attention of the organs of the Inter-American System for the protection of human rights.

²⁰ “In the matter of Section 4 and 5 of the Constitution of the Republic of Trinidad and Tobago Act No. 4 of 1976,” decision of the High Court of Justice of January 5, 2010, H.C.A. No. 1412 of 2005, pages 37 and 38. Available at: http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/rajkumar/2005/hca_05_1412DD5jan2010.pdf.

²¹ *Cf. Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering para. 13.

²² *Cf. Case of Gutiérrez Soler v. Colombia. Provisional Measures regarding Colombia*. Order of the Inter-American Court of Human Rights of October 23, 2012, Considering para. 21, and *Matter of Millacura Llaipén et al. Provisional Measures regarding Argentina*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering para. 18.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the attributes conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of the Rules of Procedure,

DECIDES:

1. To lift the provisional measures in favor of Andrew Dottin, Arnold Ramlogan, Balkissoon Roodal, Beemal Ramnarace, Kevin Dial, Sheldon Roach, and Takoor Ramcharan, in conformity with Considering paragraphs 6 to 16 of the present Order.
2. To require the Secretariat of the Court to serve notice of the present Order on the Republic of Trinidad and Tobago, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.
3. To archive the present matter.

Diego García-Sayán
President

Manuel Ventura Robles

Alberto Pérez Pérez

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar