

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 21, 2011**

**CASE OF BOYCE *ET AL.* V. BARBADOS
AND
CASE OF DACOSTA CADOGAN V. BARBADOS
MONITORING COMPLIANCE WITH JUDGMENTS**

HAVING SEEN:

1. The Judgment on the preliminary objection, merits, reparations, and costs delivered in the *Case of Boyce et al v. Barbados* by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal") on November 20, 2007 (hereinafter "the *Boyce* Judgment" or "*Boyce*"), whereby it decided that:

[...]

6. The State shall formally commute the death sentence of Michael McDonald Huggins within six months from the date of notification of the [...] Judgment[;]

7. The State shall adopt, within a reasonable time from the date of notification of the [...] Judgment, such legislative or other measures as may be necessary to ensure that the imposition of the death penalty does not contravene the rights and freedoms guaranteed under the Convention, and in particular, that it is not imposed through mandatory sentencing [...][:]

8. The State shall adopt, within a reasonable time from the date of notification of the [...] Judgment, such legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and, specifically, remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws" [...][:]

9. The State shall adopt and implement, within a reasonable time from the date of notification of the [...] Judgment, such measures necessary to ensure that the conditions of detention in which the victims in this case are held comply with the requirements of the American Convention [...][:]

[...]

11. The State shall make the payment for reimbursement of costs and expenses within six months of notification of th[e] Judgment [...].

2. The brief of January 30, 2009, whereby the State of Barbados (hereinafter "the State" or "Barbados") reported on its compliance with the *Boyce* Judgment (*supra* Having Seen clause 1).

3. The brief of March 30, 2009, whereby the representatives of the victims presented their observations on the report submitted by the State (*supra* Having Seen clause 2).

4. The brief of March 25, 2009, whereby the Commission presented its observations on the report submitted by the State (*supra* Having Seen clause 2).

AND HAVING SEEN

5. The Judgment on preliminary objections, merits, reparations, and costs delivered in the *Case of DaCosta Cadogan v. Barbados* by the Inter-American Court on September 24, 2009 (hereinafter "the *DaCosta Cadogan* Judgment" or "*DaCosta Cadogan*"), whereby it decided that:

9. The State shall adopt, within a reasonable time [...], the legislative or other measures necessary to ensure that the Constitution and laws of Barbados, particularly Section 2 of the Offences Against the Person Act and section 26 of the Constitution, are brought into compliance with the American Convention[;]

10. The State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty will be duly informed, at the initiation of the criminal proceedings against them, of their right to obtain a psychiatric evaluation carried out by a state-employed psychiatrist[...][;]

11. The State shall set aside and not carry out the death penalty imposed on Tyrone DaCosta Cadogan and provide him, within a reasonable time and [...] without the need for a new trial, a hearing for the judicial determination of the appropriate sentence in his case, in consideration of the particular characteristics of the crime and the participation and degree of culpability of the defendant. This must be carried out under the new legislative framework applicable in Barbados as a result of the legislative measures ordered by this Tribunal in order to ensure that the imposition of the death penalty does not violate the rights and liberties guaranteed in the Convention[;]

12. The State shall not impose a sentence of death on Mr. DaCosta Cadogan under the new legislative measures ordered [in the Judgment][;]

13. The State shall make the payment for reimbursement of costs and expenses established in [the] Judgment [...].

6. The brief of October 27, 2010, whereby the State reported on its compliance with the *DaCosta Cadogan* Judgment (*supra* Having Seen clause 5).

7. The brief of June 23, 2011, whereby the representatives of the victims presented their observations on the report submitted by the State (*supra* Having Seen clause 6).

8. The brief of May 11, 2011, whereby the Commission presented its observations on the report submitted by the State (*supra* Having Seen clause 6).

CONSIDERING THAT:

1. Monitoring compliance with its decisions is an inherent power of the judicial functions of the Court.

2. Barbados became a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on November 27, 1982, and acknowledged the compulsory jurisdiction of the Court on June 4, 2000.

3. Pursuant to Article 68(1) of the American Convention, "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Thus, States must ensure that the decisions of the Court are implemented domestically.¹

4. Given that in accordance with Article 67 of the American Convention, the Court's judgments are final and not subject to appeal, the State must fully and promptly comply with the judgments delivered by the Court.

5. The obligation to comply with the Court's judgments conforms to a basic principle of International Law, supported by international jurisprudence, according to which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their domestic laws to escape their pre-established international responsibility.² State Parties' obligations under the Convention bind all State branches and organs.³

6. States Parties to the Convention must guarantee compliance with its provisions and their effects (*effet utile*) in their domestic legal orders. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those on the rights protected), but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and implemented in such a way that the protected guarantee is truly useful and effective, considering the special nature of human rights treaties.⁴

7. States Parties to the Convention that have accepted the Court's binding jurisdiction have a duty to comply with the obligations established by the Tribunal. This includes the obligation to inform the Court on the measures adopted in order to comply with its decisions. The State's timely observance of the obligation to indicate how it is complying with each of the Court's orders is fundamental for evaluating its compliance with the Judgment as a whole.⁵

8. The Judgments issued in the cases of *Boyce et al v. Barbados* and *DaCosta Cadogan v. Barbados* both ordered, as reparations to the victims in those cases, the adoption of

¹ Cf. *Case of Baena Ricardo v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of October 10, 2011, Considering clause four.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause five.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause three; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause five.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999, para. 37; and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause six.

⁵ Cf. *Case of "Five Pensioners" v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause five; and *Case of the "Las Dos Erres" Massacre v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 06, 2011, Considering clause six.

legislative or other measures necessary in order to bring the Barbadian Constitution and domestic laws on the death penalty into compliance with the American Convention. Given these common orders against the same State, as well as the fact that the same parties represent the victims in both cases,⁶ the Court finds it appropriate to issue a single Order analyzing the State's compliance with both of the Judgments mentioned.

A. ORDERS COMMON TO THE BOYCE AND DACOSTA CADOGAN CASES

A.1. The obligation to adopt legislative or other measures necessary to ensure that the imposition of the death penalty does not contravene the American Convention, and in particular, that is not imposed through mandatory sentencing (Operative Paragraph seven of the *Boyce* Judgment); and to ensure that the laws of Barbados, particularly Section 2 of the Offences Against the Person Act, are brought into compliance with the Convention (Operative Paragraph nine of the *DaCosta Cadogan* Judgment)

9. The Court notes, as a preliminary matter, that Section 2 of the Offences Against the Person Act of Barbados imposes the death penalty for the crime of murder through mandatory sentencing⁷ and was found to be contrary to the Convention in both the *Boyce*⁸ and *DaCosta Cadogan*⁹ cases. Therefore, the Court finds it appropriate to analyze Operative Paragraph seven of the former Judgment, which requires the repeal of the mandatory death penalty, together with Operative Paragraph nine of the latter Judgment, which requires this repeal through the amendment of Section 2 of the abovementioned Act.

10. With respect to the *Boyce* case, the State reported that it had decided to abolish the mandatory aspect of the death penalty. To this end, the State indicated that it intended to institute legislative changes and that it would forward evidence of these changes to the Court as soon as they became available. However, in its report on compliance with the *DaCosta Cadogan* Judgment, the State indicated that a "Committee to Study the Ramifications of Repealing Section 26 of the Constitution" (hereinafter, "Committee") had been formed in order to consider, *inter alia*, the legislative changes necessary to repeal the mandatory death penalty. In a meeting held on October 14, 2010, the Committee considered three draft bills.¹⁰ According to the State, these would require, among other things, "endorsement by the Attorney General, approval by the Cabinet, acceptance and enactment into law by the Parliament, and promulgation by the Governor General" in order to become law. Additionally, the State noted that the draft legislation would provide for "the judicial determination of [the] sentence of any person who was convicted of murder and sentenced to death prior to the date of entry into force of [what is now] draft legislation.

⁶ Saul Lehrfreund and Parvais Jabbar of the Law Firm of Simons Muirhead & Burton represent the victims in both the *Boyce* and *DaCosta Cadogan* cases. In the case of *DaCosta Cadogan*, the victim was also represented by Alair Shepherd Q.C., Douglas Mendez S.C., Tariq Khan, Ruth Brander, and Alison Gerry.

⁷ That is, it establishes the death penalty as the only possible sentence for the crime of murder and does not allow the imposition of a lesser sentence in consideration of the particular characteristics of the crime or the participation and degree of culpability of the defendant. *Cf. Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of November 20, 2007. Series C No. 169, para. 57.

⁸ *Cf. Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs, supra note 7, para. 72.*

⁹ *Cf. Case of DaCosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 24, 2009. Series C No. 204, para. 51.

¹⁰ The "Constitution (Amendment) Bill, 2010," the "Offences Against the Person (Amendment) Bill, 2010," and the "Penal System Reform (Amendment) Bill, 2010."

This judicial determination of [the] sentence would be provided in a sentence review hearing by the trial judge, and if the trial judge [were to be] unavailable, by the Chief Justice." Finally, the State reiterated that it would submit evidence to the Court of the final legislative measures adopted.

11. The representatives welcomed the State's decision to abolish the mandatory aspect of the death penalty and indicated that they "look forward to receiving evidence of the relevant legislative changes once available." Furthermore, the representatives asked the State to confirm whether the proposed legislative changes "will apply retrospectively" so that all prisoners currently sentenced to death will have those sentences quashed and be entitled to re-sentencing hearings. Finally, the representatives requested that the State provide a timeline for enacting the proposed legislation, as well as drafts of the bills currently under consideration.

12. The Commission welcomed the State's position and indicated that "it would be of great importance for the State to present information [on] how this change will be codified in law and put into practice," as well as on "the timeframe in which this legislative development [will] take place."

13. The Court values the State's willingness to abolish the mandatory aspect of the death penalty and to submit evidence of this change once legislative measures have been enacted. However, as it has not yet received this information, the Court finds that the present orders are pending compliance and requests that the State submit an updated report on the status of the draft bills reviewed by the "Committee to Study the Ramifications of Repealing Section 26 of the Constitution," as well as a copy of those bills (*supra* Considering clauses 10-11).

A.2. The obligation to adopt legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and, specifically, remove the immunizing effect of section 26 of the Constitution in respect of "existing laws" (Operative Paragraph eight of the *Boyce* Judgment and Operative Paragraph nine of the *DaCosta Cadogan* Judgment)

14. With respect to the *Boyce* case, the State reported that it had decided to abolish section 26 of the Barbadian Constitution and would forward evidence of this change to the Court once it became available. However, in its report on compliance with the *DaCosta Cadogan* Judgment, the State indicated that a "Committee to Study the Ramifications of Repealing Section 26 of the Constitution" (*supra* Considering clause 10) had been formed in order to consider, *inter alia*, the repeal of section 26 of the Constitution. According to the State, this Committee had reviewed all of the legislation saved by virtue of section 26 and examined draft legislation to effect the required changes, including the "Constitution (Amendment) Bill, 2010" considered at its meeting of October 14, 2010 (*supra* Considering clause 10).

15. The representatives welcomed the State's decision to repeal section 26 of the Constitution and stated that they "look[ed] forward to receiving evidence of this constitutional change in due course." They also requested that the State submit a "timeline for enacting the proposed legislation, as well as drafts of the bills currently under consideration."

16. The Commission welcomed the decision of the State to repeal section 26 of the Constitution as “a positive and important legislative development.” However, it also noted that the State did not submit information as to how this change will be effectuated. Accordingly, the Commission requested that the Court order the State to provide “the requisite information,” including information on “the timeframe in which this legislative development [will] take place.”

17. The Court values the decision of the State to repeal section 26 of the Constitution and to submit evidence of this change. However, as it has not yet received this evidence, the Court finds that the present orders are pending compliance and requests that the State submit an updated report on the status of the process initiated for the purpose of repealing section 26 of the Constitution.

B. ORDERS PECULIAR TO THE BOYCE JUDGMENT

B.1. Obligation to formally commute the death sentence of Michael McDonald Huggins within six months of the date notice of the *Boyce* Judgment was served (Operative Paragraph six of the *Boyce* Judgment)

18. The State reported that by virtue of the “Warrant of Commutation” of June 13, 2008, issued by the Governor General of Barbados, the death sentence of Mr. Michael McDonald Huggins was commuted to life imprisonment on June 17, 2008. Pursuant to the Warrant of Commutation attached to the State's report, Mr. Huggins was granted a pardon for the offence for which he was convicted “on the condition that [he] be imprisoned for the remainder of his natural life [...]”

19. The representatives expressed concern with the wording of the Warrant of Commutation, noting that it states that Michael McDonald Huggins “shall be imprisoned for the remainder of his natural life.” They indicated that “if Michael Huggins'[s] sentence of life imprisonment means that he is to remain in prison for the rest of his life without the possibility of parole, such a sentence, mandatorily imposed, is subject to almost all the vices held to be inherent [to] the mandatory death sentence itself.” Thus, the representatives asked that the State “confirm whether the condition attached to the pardon is to be read literally, or whether the warrant should be interpreted as intending to do no more than substitute a sentence of life imprisonment subject to a system of periodic review.”

20. The Commission “recognize[d] and value[d] this measure of compliance.” However, it also noted that, “as stated in its application before the Court, ‘the mercy procedure is not an adequate substitute for a judicial process that determines the appropriate sentence after a conviction for murder.’”

21. In light of the statements of the parties, the Court finds that the State has commuted Mr. Michael McDonald Huggins's death sentence pursuant to Operative Paragraph six of the *Boyce* Judgment and, therefore, has complied with the present order.

B.2. The obligation to adopt and implement measures necessary to ensure that the conditions of detention of the victims in the *Boyce* case comply with the requirements of the American Convention (Operative Paragraph nine of the *Boyce* Judgment)

22. The State reported that the victims Lennox Ricardo Boyce, Jeffrey Joseph, and Michael McDonald Huggins are being detained in “a new purpose-built, state-of-the-art prison at Dodds, St. Philip,” and that none are currently being detained “on ‘death row.’”¹¹ At this new facility, prisoners have cells outfitted with space,¹² natural and fluorescent light, ventilation, and “a combined lavatory/water closet and sink.” According to the State, privacy is ensured through “partitioned toilet facilities.” Prisoners also receive “time out of their cells for exercise and other activities, on average 3 hours per day, as well as a minimum of 15 minutes a month for visitations by family and friends. [In addition, all] inmates are provided with [means for] contact[ing] others, including letters, access to stationary[,] and other writing materials.” Finally, the State indicated that neither Glendairy Prison nor Harrison's Point Temporary Prison is being used to house prisoners. The State attached a copy of a report from the Superintendent of Prisons to the Office of the Attorney General, in which the former provided details on the conditions at the prison at Dodds.

23. The representatives noted differences between the report of the State and the report of the Superintendent of Prisons (*supra* Considering clause 22) regarding the time that prisoners are allowed for exercise out of their cells and for visits from family and friends.¹³ They also expressed concern that the latter Report indicated that temporary solitary confinement is used for mentally disturbed prisoners.

24. The Commission observed that “in general and *prima facie*, the new prison would ensure better prison conditions” for the victims. However, the Commission also noted discrepancies between the State's report and that of the Superintendent of Prisons (*supra* Considering clause 22) with respect to the time that the prisoners allegedly receive for exercise and visitation. It therefore indicated that “It would be helpful if the State would clarify these discrepancies in its next report.” Furthermore, the Commission requested that the Court order the State to provide more information on the “Prison Rules 1978 Caption 168 Subsidiary Legislation of the Constitution of Barbados,” which, according to the Superintendent of Prisons's Report, guides the treatment of prisoners.

25. From the information provided by the parties, the Court notes that the victims in the *Boyce* case have been transferred to a new, purpose-built prison where they will have a measure of personal privacy, proper lavatory facilities, access to natural light, a daily exercise regime, and visitation with family and friends at regular intervals, and that none are currently being held on “death row.” In that regard, the Court notes that the State has complied with a fundamental part of this measure of reparation. However, given that the information presented by the State differs from that provided in the report of the Superintendent of Prisons with respect to some points, and given that Mr. Michael McDonald Huggins's sentence was commuted to life in prison, it is necessary that the State submit complementary information to the Court on such matters as the amount of time provided to prisoners for exercise on a daily basis and for visitation with family and friends, as well as any other matter that the State considers relevant to the Tribunal's evaluation of its

¹¹ Frederick Benjamin Atkins, who had been transferred to Harrison's Point Prison on June 18, 2005, died in a hospital on October 30, 2005, due to an illness. *Cf. Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs, supra* note 7, para. 95.

¹² Single cells measure 13' 4", 7' 2", and 8' 3.5" (LWH) and dormitories measure 50', 16' 1", and 9' 9.5" (LWH).

¹³ The Superintendent of Prisons's report indicates that “Inmates are given daily one hour exercise in the open air[,] weather permitting[;] however, this could be reduced to half [an] hour in special circumstances. In addition, there [are] also Day-Room Facilities on remand, minimum and medium housing accommodation, which allows for additional recreation [*sic*].” Additionally, the report states that prisoners are allowed “fifteen (15) minutes visitations by family and friends per week, or month, as well as visits (no time stipulated) by lawyers or consulate [*sic*].”

effective compliance with this obligation. In this regard, the Court recalls that the United Nations *Standard Minimum Rules for the Treatment of Prisoners* indicate that “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits,”¹⁴ and that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”¹⁵ In light of the foregoing, the Court finds that the State has partially complied with the present order.

B.3. Obligation to pay the amounts established in the *Boyce* Judgment for reimbursement of costs and expenses (Operative Paragraph eleven of the *Boyce* Judgment)

26. The State reported that “[a]rrangements are being made” for the payment of costs and expenses in the amount of USD \$27,000.00 (twenty seven thousand dollars of the United States of America), plus interest, to the representatives. According to the State, the payment of these sums has already “been authori[z]ed at the Ministerial level,” and the representatives have submitted, upon request, “the required account information to facilitate payment by wire.” The State further averred that it would “shortly” inform the Court on the completion of this transaction.

27. The representatives acknowledged receipt of US\$ 27,000.00 (twenty seven thousand dollars of the United States of America) from the State as reimbursement of costs and expenses.

28. The Commission noted that the payment of costs and expenses was due “on June 17, 2008,” and, therefore, “interest [must] be paid on the amount owed.”

29. In light of the statements of the parties, and, in particular, the acknowledgment of the representatives, the Court finds that this order has been complied with.

C. ORDERS PECULIAR TO THE DACOSTA CADOGAN JUDGMENT

C.1. Obligation to inform all persons accused of a crime subject to mandatory capital punishment of the right to obtain a psychiatric evaluation by a State-employed psychiatrist (Operative Paragraph ten of the *DaCosta Cadogan* Judgment)

30. The State averred that a committee¹⁶ charged with considering this issue decided that “the best procedural moment for the provision of such information would be at the

¹⁴ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, Rule 21(1). Available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html>.

¹⁵ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, *supra* note 14, Rule 37. Additionally, this Court has stated that “An inmate’s right to personal privacy and to the privacy of his family life may be restricted. This restriction of rights is a consequence or collateral effect of the deprivation of liberty, but must be kept to an absolute minimum since, under international law, no restriction of a human right is justifiable in a democratic society unless necessary for the general welfare.” *Cf. Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 154.

¹⁶ This Committee was made up of members of the Solicitor General’s Chambers, the Ministry of Foreign Affairs, the Office of the Attorney General, the Office of the Director of Public Prosecutions, and an advisor on

initiation of the criminal proceeding - at the arraignment hearing (the moment when the individual is formally charged with the capital offence in a court of law)." The State further noted that the Chief Justice of Barbados has been informed of the obligations imposed by the Judgment of the Inter-American Court.

31. The representatives "welcome[d] the State's willingness to provide individuals accused of crimes subject to mandatory capital punishment with access to psychiatric evaluations." However, they requested that the State provide "detailed information o[n] how this policy has been implemented, and [on whether] it has already been applied to any cases."

32. The Commission welcomed the efforts of Barbados to comply with this order, but indicated that it lacked information on "the practical effects of providing such information in the prevention of similar occurrences."

33. The Court finds the decision made by the State in order to ensure the fulfillment of this obligation to be a positive step. However, the Court finds it necessary to request further information from the parties on whether the measure decided upon has already been applied and on how it is functioning, if applicable. Therefore, the Court finds that this obligation has been partially fulfilled.

C.2. Obligation to set aside the death penalty imposed on Tyrone DaCosta Cadogan and to provide him a hearing for the judicial determination of the appropriate sentence in his case under the new legislative framework applicable in Barbados as a result of the legislative measures ordered by the Inter-American Court (Operative Paragraph eleven of the *DaCosta Cadogan* Judgment); and the Obligation to refrain from imposing a sentence of death on Mr. DaCosta Cadogan under the new legislative measures ordered in the Judgment (Operative Paragraph twelve of the *DaCosta Cadogan* Judgment)

34. The State highlighted that its draft legislation abolishing the mandatory death penalty (*supra* Considering clause 10) provides for the judicial determination, at a review hearing, of the sentence of any person convicted of murder and sentenced to death prior to the date of entry into force of that legislation. According to the State, the legislation "further provides that a person whose sentence is reviewed [...] shall not be subjected to a sentence of death." Thus, Mr. Cadogan will be provided with a re-sentencing hearing "[a]s soon as the legislative changes have been enacted."

35. The representatives "welcome[d] the State's willingness to comply" with this order of the Court. However, they requested that the State "provide information regarding the procedure for quashing Mr. DaCosta Cadogan's death sentence, as well as the timeline for enacting the proposed legislation."

36. The Commission welcomed "the willingness expressed by the State," but requested further information on how the proposed changes will be "codified in law and put into practice," as well as on the "time frame in which this legislative development could take place."

37. The Court values the steps taken by the State in order to comply with these obligations. However, it also notes that the State's compliance with the obligation to set aside the death penalty imposed on Mr. DaCosta Cadogan and to provide him a hearing for the judicial determination of the appropriate sentence in his case, which may not result in the imposition of the death penalty, necessarily depends on its enactment of the legislative measures ordered in the *DaCosta Cadogan* Judgment. Therefore, the Court finds that the present orders have not been complied with and requests that the State submit information specifying when Mr. Cadogan's resentencing hearing is likely to occur.

C.3. Payment of costs and expenses to Mr. DaCosta Cadogan's representatives (Operative Paragraph thirteen of the *DaCosta Cadogan* Judgment)

38. The State affirmed that "Payment for reimbursement of the costs and expenses [...] was made by Barbados to the [victim's representatives,] who confirmed receipt on September 7, 2010, of these funds."

39. The victim's representatives acknowledged receipt of USD \$17,975.00 (seventeen thousand nine hundred seventy-five dollars of the United States of America) from the State as reimbursement of costs and expenses, "as ordered by the Court."

40. The Commission noted that "Barbados had the duty to [reimburse the representatives' costs and expenses] within [...] six months" as of the date the *DaCosta Cadogan* Judgment was served and indicated that it would "provide more conclusive observations on this matter" when it had received the observations of the representatives (*supra* Considering clause 39).

41. In light of the statements of the parties, and, in particular, the acknowledgment of the representatives, the Court finds that this order has been complied with.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 24, 25 and 30 of the Statute of the Court, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES IN RELATION TO THE *BOYCE* AND *DACOSTA CADOGAN* JUDGMENTS THAT:

1. In accordance with Considering clauses 9-17 of this Order, compliance with the following obligations contained in both Judgments is pending:

- a) the obligation to adopt, within a reasonable time from the date of notification of the [*Boyce*] Judgment, such legislative or other measures as may be necessary to ensure that the imposition of the death penalty does not contravene the rights and freedoms guaranteed under the Convention, and in particular, that it is not imposed through mandatory sentencing (Operative Paragraph seven of the *Boyce* Judgment);

b) the obligation to adopt, within a reasonable time from the date of notification of the [*Boyce*] Judgment, such legislative or other measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention, and, specifically, remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws" (Operative Paragraph eight of the *Boyce* Judgment); and

c) the obligation to adopt, within a reasonable time and in accordance with paragraph 104 of [the *DaCosta Cadogan*] Judgment, the legislative or other measures necessary to ensure that the Constitution and laws of Barbados, particularly Section 2 of the Offences Against the Person Act and section 26 of the Constitution, are brought into compliance with the American Convention (Operative Paragraph nine of the *DaCosta Cadogan* Judgment).

DECLARES IN RELATION TO THE *BOYCE* JUDGMENT THAT:

2. In accordance with Considering clauses 18-21 and 26-29 of this Order, the State of Barbados has fully complied with the following obligations:

a) the obligation to formally commute the death sentence of Michael McDonald Huggins within six months from the date of notification of the Judgment (Operative Paragraph six of the *Boyce* Judgment);

b) the obligation to make payment for reimbursement of costs and expenses within six months of notification of the Judgment (Operative Paragraph eleven of the *Boyce* Judgment).

3. That in accordance with Considering clauses 22-25 of this Order, the State of Barbados has partially complied with the following obligation:

a) the obligation to adopt and implement, within a reasonable time from the date of notification of the Judgment, such measures necessary to ensure that the conditions of detention in which the victims in the case are held comply with the requirements of the American Convention (Operative Paragraph nine of the *Boyce* Judgment).

DECLARES IN RELATION TO THE *DACOSTA CADOGAN* JUDGMENT THAT:

4. In accordance with Considering clauses 38-41 of this Order, the State of Barbados has fully complied with the following obligation:

a) the obligation to make the payment for reimbursement of costs and expenses established in the Judgment (Operative Paragraph thirteen of the *DaCosta Cadogan* Judgment).

5. That in accordance with Considering clauses 30-33 of this Order, the State of Barbados has partially complied with the following obligations contained therein:

a) the obligation to ensure that all persons accused of a crime whose sanction is the mandatory death penalty will be duly informed, at the initiation of the criminal proceedings against them, of their right to obtain a psychiatric evaluation carried out by a State-employed psychiatrist (Operative Paragraph ten of the *DaCosta Cadogan* Judgment).

6. In accordance with Considering clauses 34-37 of this Order, compliance is pending on the following obligations:

a) the obligation to set aside and not carry out the death penalty imposed on Tyrone DaCosta Cadogan and provide him, within a reasonable time and without the need for a new trial, a hearing for the judicial determination of the appropriate sentence in his case, in consideration of the particular characteristics of the crime and the participation and degree of culpability of the defendant, in keeping with the new legislative framework applicable in Barbados as a result of the legislative measures ordered by the Inter-American Court (Operative Paragraph eleven of the *DaCosta Cadogan* Judgment); and

b) the obligation to refrain from imposing a sentence of death on Mr. DaCosta Cadogan under the new legislative measures ordered in the Judgment (Operative Paragraph twelve of the *DaCosta Cadogan* Judgment).

AND DECIDES,

1. To require the State of Barbados to take the necessary measures to fully comply with the Operative Paragraphs of the *Boyce* and *DaCosta Cadogan* Judgments pending compliance, as indicated in Declarative paragraphs 1, 3, 5, and 6 of this Order, in accordance with Article 68(1) of the American Convention on Human Rights.

2. To continue monitoring compliance with the orders of the *Boyce* and *DaCosta Cadogan* Judgments pending fulfillment.

3. To require the State of Barbados to submit to the Court, by February 27, 2012, two detailed reports, one with respect to the *Boyce* Judgment and the other regarding the *DaCosta Cadogan* Judgment, on the actions taken in order to comply with the Inter-American Court's orders still pending fulfillment, as set forth in this Order. Thereafter, the State of Barbados must submit reports on its compliance with the *Boyce* and *DaCosta Cadogan* Judgments every three months.

4. To request that the representatives of the victims and the Inter-American Commission on Human Rights file observations to the State of Barbados's reports within four and six weeks, respectively, as of the date on which they are served.

5. To request that the Secretariat of the Court serve notice of this Order upon the State of Barbados, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
Presidente

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretario

Comuníquese y ejecútese,

Diego García-Sayán
Presidente

Pablo Saavedra Alessandri
Secretario