

Inter-American Court of Human Rights

Case of *Boyce et al. v. Barbados*

Judgment of November 20, 2007 (*Preliminary Objection, Merits, Reparations and Costs*)

In the *Case of Boyce et al.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), composed of the following judges:

Sergio García-Ramírez, President;
Cecilia Medina-Quiroga, Vice-President;
Manuel E. Ventura-Robles, Judge;
Diego García-Sayán, Judge;
Leonardo A. Franco, Judge;
Margarette May Macaulay, Judge, and
Rhadys Abreu-Blondet, Judge;

also present,

Pablo Saavedra-Alessandri, Registrar, and
Emilia Segares-Rodríguez, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 37, 56 and 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the present Judgment.

I

INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. On June 23, 2006, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court an application against the State of Barbados (hereinafter "the State" or "Barbados"). The application originated from petition No. 12.480 presented to the Secretariat of the Commission on September 3, 2004 by Messrs. Saul Lehrfreund and Parvais Jabbar of the law firm of Simons Muirhead & Burton, located in London, United Kingdom. On February 28, 2006, the Commission adopted the admissibility and merits report No. 03/06, pursuant to Article 50 of the Convention¹, in which it made certain recommendations to the State. Considering that

¹ In the report, the Commission concluded that the State was responsible for the violation of Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the Convention, relating to the mandatory nature of the death penalty imposed upon the alleged victims; Articles 5(1) and 5(2) of the Convention, relating to the alleged victims' conditions of detention and the method of execution in Barbados; Articles 1, 5(1) and 5(2) of the Convention, relating to having the writ of hanging read to the alleged victims and in the case of Messrs. Boyce and Joseph on more than one occasion; Article 2, relating to the savings clause, and the fact that it prevents Barbados' domestic courts from giving effect

the State had not adopted its recommendations, the Commission decided on June 16, 2006 to submit this case to the jurisdiction of the Court.²

2. In the application, the Commission alleged that the State is responsible for the violations committed against Lennox Ricardo Boyce, Jeffrey Joseph, Frederick Benjamin Atkins and Michael McDonald Huggins (hereinafter “the alleged victims”), by the mandatory nature of the death penalty imposed upon the alleged victims for their murder convictions, the conditions of their detention, the reading of warrants of execution while their complaints were allegedly pending before domestic courts and the Inter-American Human Rights System, and the alleged failure to bring the domestic legislation of Barbados into compliance with its obligations under the American Convention. All four alleged victims were sentenced to death pursuant to Section 2 of Barbados’ Offences Against the Person Act of 1994, which imposes a mandatory sentence of death for persons convicted for the crime of murder.

3. The Commission asked the Court to determine the international responsibility of the State for the violation of Articles 4(1) and 4(2) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), and 8(1) (Right to a Fair Trial) of the Convention, as well as Article 1(1) (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects) of the same instrument. Furthermore, the Commission requested that the Court order the State to adopt non-monetary measures of reparation.

4. The representatives of the alleged victims and their next of kin (hereinafter “the representatives”), Mr. Saul Lehrfreund and Mr. Parvais Jabbar, submitted their written brief containing pleadings, motions and evidence (hereinafter “representatives’ brief”), in accordance with Article 23 of the Rules of Procedure. Based on the facts described by the Commission in its application, the representatives asked the Court to declare the same violations requested by the Commission, and further added that “[t]he method of execution of death by hanging violates Articles 5(2) and 5(1) [of the Convention] in conjunction with Article 1 [thereof]”, and that the reading of warrants of execution while their complaints were allegedly pending also violated Articles 4(1), 4(2), 5(1), 5(2) and 8(2) of the Convention. Moreover, they requested certain non-monetary measures of reparation and the reimbursement of certain expenses incurred in processing the case before this Court.

5. The State submitted its brief containing the answer to the application and observations to the representatives’ brief (hereinafter “answer to the application”), in which it submitted one preliminary objection, namely the non-exhaustion of domestic remedies, and “request[ed] that [the] Court expressly deny all the claims and requests of the Petitioners [and] the Commission[, and] declare that Barbados’ laws and practices are compatible with its obligations under the Inter-American [S]ystem of [H]uman [R]ights”. More specifically, the State alleged that its application of mandatory capital punishment is lawful, as it is neither expressly nor implicitly prohibited in the Convention in accordance with accepted international methods of treaty interpretation. The State asserted that a wide

to the principle that mandatory death penalty is unconstitutional, and Article 8, relating to the fact that a mandatory death penalty precludes the consideration of the individual circumstances of each case. In addition, the Commission made some recommendations to the State of Barbados. *Cf.* Inter-American Commission on Human Rights, *Report N° 03/06, Merits. Case 12.480. Lennox Boyce, Jeffrey Joseph, Frederick Benjamin Atkins and Michael Huggins. Barbados*. February 28, 2006 (case file of appendices to the application, volume IV, appendix E.1, folios 1597-1623).

² The Commission appointed Paulo Sergio Pinheiro, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Ariel E. Dulitzky, Víctor Madrigal Borloz, Brian Tittmore and Manuela Cuvi Rodríguez as legal advisers.

array of legal defenses and other mechanisms are available to defendants in capital cases. The State rejected the submission that the form of capital punishment chosen by the State, namely, hanging, can in and of itself constitute cruel, inhuman, or degrading punishment or treatment under Article 5 of the Convention. Regarding the reading of warrants of execution prior to the commencement of an appeal, the State asserted that it is required by law to carry out its legal processes, including penalties, in a timely manner, and that there is no legal requirement under either its domestic law or Inter-American human rights law that the State must await the conclusion of proceedings before the Commission. Additionally, the State asserted that the conditions of imprisonment of the alleged victims do not violate Article 5 of the Convention. Finally the State observed that its system of capital punishment is based upon the freely expressed democratic wishes of its population.

II

PROCEEDINGS BEFORE THE COURT

6. The application of the Commission was notified to the State on August 21, 2006,³ and to the representatives on August 22, 2006. In addition to the presentation of the principal briefs forwarded by the parties (*supra* paras. 1, 4 and 5), on February 21, 2007 the Commission and the representatives submitted written briefs on the preliminary objection presented by the State (*supra*, para. 5). Furthermore, on April 4, 2007, the representatives submitted an additional written pleading, pursuant to Article 39 of the Court's Rules of Procedure, to which the Commission and the State submitted their respective observations on April 25, 2007.

7. On May 29, 2007, the President of the Court (hereinafter "the President") ordered the submission of sworn declarations (affidavits) of five witnesses and five expert witnesses proposed by the Commission, the representatives, and the State, to which the parties were given the opportunity to submit their respective observations.⁴ Furthermore, due to the particular circumstances of this case, the President convened the Inter-American Commission, the representatives, and the State to a public hearing in order to receive the declarations of two witnesses and one expert witness, as well as the final arguments of the parties regarding the preliminary objection and possible merits, reparations and costs. Consequently, the Commission and the representatives took notice of the President's decision not to call Mr. Adrian King as an expert witness, and requested the President to consider summoning him to testify instead as a witness. Similarly, the State requested the substitution of one of the witnesses summoned by the President. In consideration of the observations of all parties regarding such issues, on June 14, 2007 the President decided in favor of both requests.⁵ The public hearing in this case was held on July 11, 2007, during the Court's seventy-sixth regular period of sessions.⁶

8. On August 13, 2007, the parties submitted their respective final written arguments.

³ When the application was notified to the State, the Court informed it of its right to designate an *ad hoc* Judge to participate in this case. On April 18, 2007 the State requested "an invitation from the President of the Court to appoint an *ad hoc* judge" due to "the recent and untimely demise of the judge of Barbadian nationality sitting on the Inter-American Court". On May 11, 2007, the Court decided not to grant the State's request because, pursuant to Article 10(4) of the Court's Statute, the right to appoint an *ad hoc* Judge in the present case had relinquished as of September 21, 2006.

⁴ Order issued by the President of the Inter-American Court on May 29, 2007.

⁵ Order issued by the President of the Inter-American Court on June 14, 2007.

⁶ The following were present at this hearing: (a) for the Inter-American Commission: Clare Roberts, Commissioner, as delegate; Santiago A. Canton, Executive Secretary, as delegate, and Elizabeth Abi-Mershed and Manuela Cuví Rodríguez, as advisers; (b) for the representatives: Keir Starmer, Saul Lehrfreund, Parvais Jabbar, Douglas Mendes, Ruth Brander, and Alison Gerry, from the law firm of Simons Muirhead & Burton, and (c) for the State: Jennifer Edwards, agent; David S. Berry, deputy agent, and Nicole Thompson.

9. On September 14, 2007, the President requested that the representatives submit verifying receipts and evidence regarding the expenses incurred by them in the present case.

10. On October 23, 2007, the representatives informed the Court of the “breakdown of the expenses” incurred by them, and submitted the corresponding verifying receipts and evidence on November 7, 2007.

11. On November 16, 2007, the State and the Commission submitted their respective observations regarding the alleged “breakdown of the expenses” incurred by the representatives.

III

PRIOR CONSIDERATIONS

12. Prior to analyzing the preliminary objection submitted by the State and the possible merits of this case, the Tribunal will address in this chapter the following two issues raised by the State in its submissions: a) the effect of Barbados’ reservation to the American Convention, and b) the alleged mootness of the questions presented in this case.

A. *Barbados’ Reservation to the American Convention*

13. The State asserted that “its reservation to the American Convention precludes analysis by this [...] Court of both Barbados’ (1) death penalty and (2) its form of execution.” The relevant portions of this reservation read as follows:

In respect of [Article] 4(4) [of the Convention,] 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 inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4).

In respect of [Article] 4(5)[,] while the youth or old age of an offender may be matters which the Privy Council, the [then] 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.
[...].

14. The State alleged that even if this reservation generally speaks to the age of an offender and the exclusion of treason from the scope of the term “political offences” under Article 4(4) of the Convention, the first sentence of the reservation “reserves for the State the right to carry out its sentence of death by hanging as a penalty for murder and treason as provided for in the existing criminal laws of Barbados.” The State added that, as “Barbados specifically alluded to the precise form of its capital punishment in its reservation, namely, hanging, the penalty of death by hanging is not subject to scrutiny under the American Convention in relation to Barbados.” Furthermore, the State argued that its system of mandatory capital punishment also falls under the preclusive scope of its reservation, as its laws in this regard have remained unchanged since the ratification of the Convention.

15. The Court has previously established criteria regarding the interpretation of

reservations.⁷ Firstly, in interpreting reservations the Court must first and foremost rely on a strictly textual analysis. Secondly, due consideration must also be assigned to the object and purpose of the relevant treaty⁸ which, in the case of the American Convention, involves the “protection of the basic rights of individual human beings.”⁹ In addition, the reservation must be interpreted in accordance with Article 29 of the Convention, which implies that a reservation may not be interpreted so as to limit the enjoyment and exercise of the rights and liberties recognized in the Convention to a greater extent than is provided for in the reservation itself.¹⁰

16. Textually, the first paragraph of the reservation in question specifically refers to Article 4(4) of the Convention, which excludes the application of capital punishment to political offenses or related common crimes in absolute terms.¹¹ In this regard, the State explicitly expressed in the text of its reservation its purpose and extent, stating that it “wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence”. The second paragraph of the reservation similarly addresses the State’s particular concern over Article 4(5) of the Convention with regard to the application of capital punishment to “persons of 16 years and over or over 70 years of age”.

17. The Court has previously considered that “a State reserves no more than what is contained in the text of the reservation itself.”¹² In this case, the text of the reservation does not explicitly state whether a sentence of death is mandatory for the crime of murder, nor does it address whether other possible methods of execution or sentences are available under Barbadian law for such a crime. Accordingly, the Court finds that a textual interpretation of the reservation entered by Barbados at the time of ratification of the American Convention clearly indicates that this reservation was not intended to exclude from the jurisdiction of this Court neither the mandatory nature of the death penalty nor the particular form of execution by hanging. Thus the State may not avail itself of this reservation to that effect.

B. Alleged Mootness of Questions Presented in this Case

18. The State has alleged that the issues of mandatory death penalty and hanging are “moot and no longer relevant” to the four alleged victims, as none of them “will be hanged”. Mr. Atkins cannot be executed because he died in prison in 2005 due to illness. Mr. Boyce and Mr. Joseph had their sentences commuted to life imprisonment as a result of the decision of the Barbados Court of Appeal on May 31, 2005,¹³ which was upheld by the

⁷ Cf. *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, para. 35, and *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, paras. 60-66.

⁸ Cf. Article 75 of the American Convention and Article 19 of the Vienna Convention on the Law of Treaties (stating that reservations to a treaty must be compatible with the object and purpose of the treaty).

⁹ *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75, supra note 7, para. 29, and Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra note 7, para. 65.*

¹⁰ Cf. *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra note 7, para. 66.*

¹¹ Cf. *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra note 7, para. 54.*

¹² Cf. *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), supra note 7, para. 69.*

¹³ Cf. Judgment delivered by the Barbados Court of Appeal in *Jeffrey Joseph and Lennox Ricardo Boyce v. The Attorney-General et al.*, Civil Appeal No. 29 of 2004 (May 31, 2005) (case file of appendices to the application, volume II, appendix B.5, folios 908-981).

Caribbean Court of Justice on November 8, 2006.¹⁴ Finally, the State asserted that Mr. Huggins' "death sentence may not be lawfully carried out as a result of the expiry of a period of over five years from the date of his conviction, as required by the decision of the Judicial Committee of the Privy Council in *Pratt v. Attorney-General of Jamaica*, as applied to Barbados in *Bradshaw v. Attorney-General of Barbados*".¹⁵

19. Although the parties agree that three of the alleged victims are no longer subject to execution, a controversy exists over the possibility that the fourth alleged victim, Mr. Huggins, could still face judicial hanging. Mr. Huggins was convicted and sentenced to death by hanging on July 19, 2001.¹⁶ The State argues that, because more than five years have passed since his conviction, the *Pratt* rule applies and prohibits the State from legally executing him.¹⁷ The Commission and the representatives argue that until his sentence is officially commuted, the possibility of his execution remains.

20. In this regard, the Court observes that Mr. Huggins' death sentence has not been formally commuted. Furthermore, the Court has no way to confirm, nor will it assume, that the Barbados Privy Council, which is the entity of the executive branch charged with recommending commutations of death sentences, will choose to follow the judicial precedent established in *Pratt* and *Bradshaw* and commute Mr. Huggins' sentence. There is always the possibility that an attempt may be made to challenge the applicability of the time limit for carrying out the death penalty established in *Pratt* to Mr. Huggins. Thus, the Court considers that Mr. Huggins has no legal certainty that he will not face execution unless and until his sentence is formally commuted.

21. Nevertheless, even assuming that none of the four alleged victims will be hanged, the Court considers that the State's arguments regarding the alleged mootness of the issues of mandatory death sentencing and hanging are misplaced. More specifically, the State misunderstands the moment in time in which the alleged violations would have occurred in the present case. The premise for the State's position seems to be that the mandatory death penalty and death by hanging may only give rise to a possible violation of the American Convention if and when the alleged victims are actually executed; that is, when the sentence is carried out. Without addressing the merits of the issues at this point, the Court considers that the alleged violations with regard to the issue of mandatory death penalty in this case would have occurred at the sentencing stage, when the alleged victims were sentenced to death by hanging pursuant to laws that allegedly contravene the American Convention (*infra*, paras. 51-80).

22. Additionally, even if none of the alleged victims were to face the death penalty, the

¹⁴ Cf. Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, CCJ Appeal No CV 2 of 2005, BB Civil Appeal No 29 of 2004 (November 8, 2006) (case file of appendices to the answer to the application, volume II, appendix 32, folios 3172-3348).

¹⁵ Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Pratt and Morgan v. Attorney General for Jamaica et al.* (November 2, 1993) (case file of appendices to the answer to the application, volume IV, appendix 76, folios 5158-5184), and Judgment delivered by the Judicial Committee of the Privy Council in *Bradshaw v. Attorney General of Barbados et al.* (May 24, 1995) (case file of appendices to the answer to the application, volume II, appendix 37, folios 3471-3478).

¹⁶ Cf. *Michael McDonald Huggins v. The Queen*, Record of proceedings (case file of appendices to the application, volume III, appendix B.9, folios 1475-1476).

¹⁷ The decision in *Pratt and Morgan v. Attorney General for Jamaica* imposed a five-year deadline to carry out death sentences in order to ensure timely executions ("Pratt rule"). The decision in *Pratt* was extended to Barbados by the decision in *Bradshaw*, requiring the Barbadian Privy Council to follow the same time requirements for the implementation of death sentences. Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Pratt and Morgan v. Attorney General for Jamaica et al.*, *supra* note 15, and Judgment delivered by the Judicial Committee of the Privy Council in *Bradshaw v. Attorney General of Barbados et al.*, *supra* note 15.

Court would still address the issues of mandatory death sentencing and judicial hanging in this case because of the important public interest involved and the fundamental human right at stake, namely, the right to life.

23. For all of the above reasons, the Court considers that the issues of mandatory death sentencing and judicial hangings are not moot.

IV PRELIMINARY OBJECTION *Non-Exhaustion of Domestic Remedies*

24. In its answer to the application the State objected to the admissibility of the case because domestic remedies have allegedly not been exhausted, as required by Articles 46(1)(a) and 47(a) of the American Convention and Articles 27 and 31 of the Rules of Procedure of the Inter-American Commission. In particular, the State argued that domestic remedies had not been exhausted as to the alleged conditions of detention, the alleged cruelty of hanging as a form of execution, and the alleged cruelty involved in reading warrants of execution to the alleged victims while their appeals were pending.

25. The Court has already developed clear guidelines for the analysis of an objection regarding an alleged failure of exhaustion of domestic remedies.¹⁸ Firstly, the objection has been understood by the Court to be a defense available to States, and, as such, that it may be expressly or tacitly waived. Secondly, in order for the objection of failure to exhaust domestic remedies to be timely, it must be pled in the State's first submission before the Commission; otherwise, it is presumed that the State has tacitly waived this argument. Thirdly, the Court has asserted that a State lodging this objection must specify the domestic remedies that remain to be exhausted and demonstrate that these remedies are applicable and effective.

26. The Court observes that, in their petition before the Commission, the representatives raised all three issues (conditions of detention, hanging, and reading of warrants of execution) in relation to all four victims. Nevertheless, the State did not raise any argument in its first submission before the Commission regarding the exhaustion of domestic remedies with respect to two of the four alleged victims, namely, Messrs. Boyce and Joseph. Thus, the State has implicitly waived its right to resort to such a defense with regards to these two alleged victims.

27. However, the State indicated in its first submission during the proceedings before the Commission that "there has not been an exhaustion of local remedies in respect of Michael Huggins and Frederick Atkins as there has been no order transmitted from the Judicial Committee of the Privy Council relating to their domestic appeals". In its final written arguments before the Court, the State admitted that "the above statement was incorrect since the order it refers to had already been transmitted by the Judicial Committee of the Privy Council to another branch of the Government [and therefore] the domestic process[es] related to the appeals of Mr. Huggins and Mr. Atkins] had already been completed". Nevertheless, with regard to their alleged conditions of detention, cruelty of hanging as a form of execution, and the reading of the warrants of execution, the State still maintained that it raised the issue of lack of exhaustion of domestic remedies at the appropriate procedural opportunity.

¹⁸ Cf. *Case of Velásquez Rodríguez V. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 88; *Case of Nogueira de Carvalho et al V. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 51, and *Case of Almonacid Arellano et al. V. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 64.

28. The evidence before the Court does not support the State's contention. The Commission requested observations from the State regarding the admissibility and merits of the petition on three occasions. Nevertheless, in its first submission before the Commission the State did not specify the domestic remedies that remained to be exhausted in the case of Messrs. Huggins and Atkins, or demonstrate that these remedies were applicable and effective. Such was the finding of the Commission, which concluded in its report on admissibility and merits that "the State implicitly or tacitly waived any challenge with regard to the exhaustion of remedies by the alleged victims in domestic proceedings" due to the "absence of any observations from the State regarding precisely which domestic remedies have not been exhausted by Messrs. Huggins and Atkins, and considering the fact that the State has provided no observations regarding the exhaustion of domestic remedies in the case of Messrs. Boyce and Joseph".

29. Thus, in keeping with the procedural requirements described above (*supra*, para. 25), the State implicitly waived a line of defense that the American Convention extends in its favor.¹⁹ Therefore, the preliminary objection pled by the State is hereby dismissed.

V

JURISDICTION OF THE COURT

30. The Inter-American Court has jurisdiction over this case in accordance with Article 62(3) of the Convention. The State of Barbados ratified the American Convention on Human Rights on November 27, 1982 and recognized the Court's contentious jurisdiction on June 4, 2000.

VI

PROVISIONAL MEASURES

31. On September 17, 2004, the Inter-American Commission submitted to the Court, in accordance with Articles 63(2) of the Convention and 25 of the Court's Rules of Procedure, a request for the adoption of provisional measures in favor of Messrs. Lennox Boyce and Jeffrey Joseph, who were sentenced to death in Barbados, in order 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." That same day, the President issued an Order requiring the State to adopt such provisional measures.²⁰ On November 25, 2004, the Tribunal decided "[t]o ratify the President's Order of September 17, 2004 [...] and to require the State to adopt without delay all necessary measures to comply with that Order."²¹

32. On February 11 and May 19, 2005, respectively, the Commission requested that the Court "amplify the provisional measures adopted in the matter of Boyce and Joseph" to include Messrs. Frederick Atkins and Michael Huggins, who were also sentenced to death in Barbados. Consequently, the Court's President issued Orders on February 11 and May 20, 2005, in which he required the State to adopt, without delay, all of the measures necessary to preserve the life and physical integrity of Frederick Atkins and Michael Huggins, respectively, so as not to hinder the processing of their cases before the Inter-American

¹⁹ Cf. *In the Matter of Viviana Gallardo et al.* Series A No.G 101/81, Decision of November 13, 1981, para. 26; *Case of Velásquez Rodríguez V. Honduras*, *supra* note 18, para. 88; *Case of Nogueira de Carvalho et al. V. Brazil. Preliminary Objections and Merits*, *supra* note 18, para. 51, and *Case of Almonacid Arellano et al.*, *supra* note 18, para. 64.

²⁰ Order issued by the President of the Inter-American Court on September 17, 2004.

²¹ Order issued by the Inter-American Court on November 25, 2004.

system, and to maintain all the measures taken in favor of Lennox Boyce and Jeffrey Joseph for the same purpose.²² On June 14, 2005, the Court ratified the President's Orders of February 11 and May 20, 2005 and required the State to adopt without delay all necessary measures to comply with those Orders.²³

33. As of the date of this Judgment, the State has not executed any of the beneficiaries of the provisional measures ordered by this Tribunal.

VII EVIDENCE

34. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as the Court's prior decisions regarding evidence and its assessment,²⁴ the Court will proceed to examine and assess the documentary evidence submitted by the Commission, the representatives, and the State at the different procedural stages, or as evidence requested by the President or the Court to facilitate the adjudication of the case. It will also examine and assess the testimonies and expert opinions provided by affidavit or before the Court in the public hearing. To that effect, the Court shall abide by the principles of sound criticism, within the corresponding legal framework.²⁵

A) *Documental, Testimonial, and Expert Evidence*

35. At the request of the President,²⁶ the Court received the testimonies and declarations by affidavit provided by the following witnesses and expert witnesses²⁷:

a) Lennox Ricardo Boyce, Jeffrey Joseph, and Michael McDonald Huggins, witnesses proposed by the representatives, are three of the alleged victims. They testified regarding their particular prison conditions and general conditions of confinement at Glendairy Prison and Harrison's Point Temporary Prison, and the reading of warrants of execution while their domestic appeals and their application before the Inter-American Commission were allegedly pending;

b) Frank Thornhill, witness proposed by the State, is a Chief Technical Officer in the Ministry of Public Works and Transport of Barbados, and testified regarding the mechanical procedures related to judicial hangings in Barbados;

²² Orders issued by the President of the Inter-American Court on February 11 and May 20, 2005.

²³ Order issued by the Inter-American Court on June 14, 2005, *supra* note 5.

²⁴ Cf. *Case of The Mayagna (Sumo) Awas Tingni Community V. Nicaragua. Merits, Reparations and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 86; *Case of The "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and Costs.* Judgment of May 25, 2001. Series C No. 76, para. 50, and *Case of Bámaca Velásquez V. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 15. See also *Case of the Miguel Castro Castro Prison V. Perú. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, paras. 183 and 184; *Case of Almonacid Arellano et al., supra* note 18, paras. 67, 68 and 69, and *Case of Servellón García et al V. Honduras. Merits, Reparations and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 34.

²⁵ Cf. *Case of The "White Van" (Paniagua Morales et al), supra* note 25, para. 76; *Case of Cantoral Huamaní and García Santa Cruz V. Perú. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C No. 167, para. 38, and *Case of Zambrano Vélez et al. V. Ecuador. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 166, para. 32.

²⁶ Orders issued by the President of the Court, *supra* notes 4 and 5.

²⁷ The representatives in their June 18, 2007 communication informed the Court that they would not file affidavits neither from the witness Ms. Cynthiere Atkins nor from the expert witness Professor William Schabas, who were required to render their testimony and expert opinion, respectively, by affidavit per the May 29, 2004 Order of the President, *supra* note 4.

c) Baroness Vivien Stern, expert witness proposed by the Inter-American Commission and the representatives, is a Senior Research Fellow at the International Centre for Prison Studies, University of London. She provided her expert opinion on the international instruments governing detentions, the general conditions of detention in Barbados, prison conditions at Glendairy Prison and at Harrison's Point Temporary Prison, and their compliance with international standards on the matter;

d) Harold Hillman, expert witness proposed by the representatives, is the former Director of the Unity Laboratory of Applied Neurobiology and a physician at the Medical Foundation for the Care of Victims of Torture. He provided his expert opinion regarding death as a result of judicial hangings, from a medical perspective;

e) Roger Hood, expert witness proposed by the representatives, is an Emeritus Professor of Criminology at the University of Oxford and Emeritus Fellow of All Souls College in Oxford. He provided his expert opinion regarding the evolution of state practice towards abolition of the death penalty and the status of the mandatory death penalty in retentionist states, and

f) Deryk Simon James, expert witness proposed by the representatives, is a member of the Royal College of Pathologists and Senior Lecturer in Forensic Pathology at the Wales Institute of Forensic Medicine at Cardiff University. He provided his expert opinion regarding death by hanging, its history, variables that can influence the causes of death in the mechanism of hanging, review of evidence adduced in others cases, and the method of execution as applied in Barbados.

36. During the public hearing held in the present case, the Court heard the testimonies and the expert opinion given by the following persons:

a) Adrian King, witness proposed by the Commission and the representatives, is an attorney at law and testified regarding the death penalty legislation and procedure in Barbados, the nature of mandatory sentencing, and the exercise of the prerogative of mercy in Barbados as applied in the present case and in other cases of which Mr. King has personal knowledge;

b) Alliston Seale, witness proposed by the State, is an attorney at law of the Barbados Bar Association, and testified regarding the legal procedures followed in prosecutions for the crime of murder and the exercise of the prerogative of mercy in Barbados;

c) John Nurse, witness proposed by the State, is the Superintendent of Prisons of Barbados' Prison Service and testified regarding prison conditions at Glendairy Prison and at Harrison's Point Temporary Prison, the role of police officers and of the Superintendent within such prisons, and the complaint procedures available in relation to conditions of detention, and

d) Andrew Coyle, expert witness proposed by the Commission and the representatives, is Professor of Prison Studies at the School of Law in King's College at London University and an advisor on prison matters to the United Nations and other international bodies. He provided his expert opinion regarding prison conditions at Glendairy Prison and at Harrison's Point Temporary Prison, the fire that destroyed Glendairy Prison, and general prison conditions in other countries.

B) Evidence Assessment

37. In the instant case, as in others,²⁸ the Court, in accordance with Article 44 of the Court's Rules of Procedure, admits and recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage which have neither been disputed nor challenged, and the authenticity of which has not been questioned.

38. With regard to the documents requested by the Court as evidence to facilitate adjudication of the case, in particular the receipts of expenses submitted by the representatives and the directives issued by Mr. John Nurse in June 2007 regarding the procedure for judicial hangings (*supra* paras. 8 and 9), the Court incorporates them into the body of evidence, pursuant to Article 45(2) of the Rules of Procedure.

39. Regarding the press documents submitted by the parties, the Court considers that they may be assessed insofar as they refer to public and notorious facts or statements made by State officials that have not been amended, or if they corroborate related aspects to the case that are proven by other means.²⁹

40. With respect to the testimonies and expert opinions rendered by witnesses and expert witnesses, the Court deems them relevant insofar as they comport with the scope defined by the Orders of the President (*supra* paras. 6, 35 and 36), and taking into account all the observations of the parties. The Court considers that the alleged victims have a direct interest in the outcome of this case, and therefore their statements cannot be assessed separately, but rather must be assessed within the context of the body of evidence in this case.³⁰

41. The Court also adds to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure and because it considers it useful in the ruling of this case, the diagram presented by Professor Coyle at the public hearing held on July 11, 2007.

42. Furthermore, the State presented a "[l]etter of January 21, 2003 from the Inter-American Commission on Human Rights, attaching the Minutes of Hearing No. 55, Death Penalty in Barbados, Monday, October 18, 2002" when submitting its observations to the representatives' additional written brief. The Court finds that the aforementioned document submitted by the State, which has not been challenged and the authenticity of which has not been questioned, is useful and relevant; therefore, the Court incorporates it into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

43. Additionally, the State submitted further documentary evidence with its final written arguments. The Court finds that the aforementioned documents submitted by the State, which have not been challenged and the authenticity of which has not been questioned, are useful and relevant, and they relate to clarifications required by the Judges at the public hearing on the present case. Therefore, the Court incorporates them into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

²⁸ Cf. *Case of Loayza Tamayo v. Perú. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 42, para. 53; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 25, para. 41, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 37.

²⁹ Cf. *Case of The "White Van" (Paniagua Morales et al)*, *supra* note 25, para. 75; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 25, para. 41, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 38.

³⁰ Cf. *Case of Loayza Tamayo V. Perú. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 25, para. 44, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 40.

44. The representatives objected to the affidavit submitted by Mr. Frank Thornhill on the basis of its alleged irrelevance with its purported subject. The Court nevertheless admits this evidence insofar as it relates to the subject declared in the President's Order (*supra*, para. 7), taking into consideration the representatives' observations, and will assess its probative value according to the rules of sound criticism and the body of evidence in the case.

45. Having examined the evidentiary elements that have been incorporated into the present case, the Court will proceed with its analysis of the alleged violations of the American Convention in light of the facts that the Court deems proven, as well as the parties' legal arguments.

VIII
VIOLATION OF ARTICLES 4(1)³¹ AND 4(2)³² OF THE CONVENTION
IN CONJUNCTION WITH ARTICLE 1(1)³³ THEREOF

46. In this chapter, the Court will address the parties' arguments regarding whether the imposition of a mandatory death sentence to the four alleged victims violated their right to life.

A. Mandatory Death Penalty

47. The Commission and the representatives alleged that the State has violated Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the Convention, in conjunction with Article 1(1) thereof, in relation to the State's imposition of a mandatory death sentence to the four victims for the crime of murder. In particular, the Commission stated that a law which automatically assigns a penalty of death without judicial review and without consideration of the nature of the crime and the accused individual's degree of culpability contravenes the right not to be arbitrarily deprived of life, the right to humane treatment, and the right to a fair trial. The representatives specified that: contrary to Article 4(1) of the Convention that prohibits the arbitrary deprivation of life, the mandatory death penalty condemned the petitioners "without consideration of their individual humanity"; contrary to Article 4(2) of the Convention that requires the death penalty to apply only to the most serious crimes, the mandatory death penalty condemned the petitioners without a judicial determination of the mitigating or aggravating circumstances of the crime; contrary to Article 8(1) of the Convention that requires punishment to be determined by a competent, independent and impartial tribunal, the law set a mandatory punishment of death for the petitioners, and contrary to Article 5(1) and 5(2) of the Convention, the mandatory punishment of death assigned to the petitioners degraded their inherent dignity as human beings.

48. Barbados refuted the Commission and the representatives' allegations and maintained that it has not violated Articles 1, 4, 5, and 8 of the American Convention

³¹ In its pertinent part, Article 4 establishes that: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life".

³² The relevant part of Article 4 states that: "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply".

³³ In its relevant part, Article 1 stipulates that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition".

because “[m]any of these alleged violations are based upon the mistaken assumption that Article 4 of the Convention prohibits mandatory capital punishment.” Accordingly, a central argument advanced by the State is that the mandatory death penalty remains legally permissible according to internationally recognized rules of treaty interpretation under both the Charter, as interpreted by the American Declaration, and the American Convention. Thus, the State asserted that its constitutionally protected form of capital punishment is not in contravention with its Inter-American human rights obligations. The State submitted that Article 4 must be read strictly, and that its correct interpretation cannot support either an abolitionist agenda or any restriction on the right of States to impose the mandatory capital punishment. The State submitted that the decisions of the Court and the reports of the Commission are incorrect as a matter of law and thus such interpretations would fall outside of the competence of each organ “as being *ultra vires*”. As a result, the State argued that previous judgments cannot constitute binding or even persuasive precedent, and all of the issues concerning permissible forms of capital punishment must be open for reconsideration by this Court.

49. The Court considers that there is no dispute that the four alleged victims, Messrs. Boyce, Joseph,³⁴ Atkins³⁵ and Huggins³⁶ were sentenced to capital punishment³⁷ pursuant to Section 2 of Barbados’ Offences Against the Person Act of 1994, which reads: “[a]ny person convicted of murder shall be sentenced to, and suffer, death.”³⁸ There is also no dispute that such legislation imposes a mandatory sentence of death for persons convicted for the

³⁴ Jeffrey Joseph and Lennox Ricardo Boyce were accused together with Rodney Murray and Romaine Bend of allegedly beating Marquelle Hippolyte on April 10, 1999, which eventually caused his death on April 15, 1999. On January 10, 2001 they were arraigned for the crime of murder. Rodney Murray and Romaine Bend pleaded guilty to the lesser offence of manslaughter, which was accepted by the Prosecution. Boyce and Joseph, however, pleaded not guilty to the charge of murder. On February 2, 2001 Lennox Boyce and Jeffrey Joseph were found guilty of murder and sentenced to suffer death by hanging pursuant to the Offences Against the Person Act. *Cf. Lennox Ricardo Boyce and Jeffrey Joseph v. The Queen*, Record of proceedings (case file of appendices to the application, volume II, appendix B.1, folios 502 and 814-815); Judgment delivered by the Barbados Court of Appeal in *Jeffrey Joseph and Lennox Ricardo Boyce v. The Attorney-General et al.*, *supra* note 13, (folios 910-912); Affidavit of Jeffrey Joseph, August 17, 2004 (case file of appendices to the application, volume IV, appendix D.1, folios 1556), and Affidavit of Lennox Boyce, August 17, 2004 (case file of appendices to the application, volume IV, appendix D.1, folio 1559).

³⁵ Frederick Benjamin Atkins was charged with the murder of Sharmaine Hurley, who died sometime between October 10 and 13, 1998, as a result of two stab wounds in the chest. Mr. Atkins pleaded not guilty to the charge of murder and on July 21, 2000 was convicted and sentenced to suffer death by hanging pursuant to the Offences Against the Person Act. *Cf. Her Majesty The Queen v. Frederick Benjamin Atkins*, Trial Transcript (case file of appendices to the application, volume III, appendix B.6, folios 1010, 1014, 1085, and 1325), and Judgment delivered by the Court of Appeal of Barbados, *Frederick Benjamin Atkins v. The Queen*, Criminal Appeal No. 21 of 2000 (case file of appendices to the application, volume III, appendix B.7, folio 1328).

³⁶ Michael McDonald Huggins was accused of the murder of Stephen Wharton, who died as a result of a gunshot wound on November 30, 1999. Mr. Huggins pleaded not guilty to the crime of murder and on July 19, 2001, he was convicted and sentenced to suffer death by hanging pursuant to the Offences Against the Person Act. *Cf. Michael McDonald Huggins v. The Queen*, *supra* note 16, (folios 1384 and 1476), and Affidavit of Michael Huggins, August 17, 2004 (case file of appendices to the application, volume IV, appendix D.1, folio 1562).

³⁷ The Tribunal recalls that it is not a criminal court before which a person’s individual criminal responsibility can be adjudicated. This matter corresponds to domestic courts. Furthermore, the Court is cognizant of the State’s duty to protect all persons, prevent the commission of crimes, punish those responsible and generally maintain public order. However, the State’s crime prevention and punishment regime should be carried out with the utmost respect for the human rights of the persons under their jurisdiction and in compliance with the applicable human rights treaties. *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 154; *Case of Suárez Rosero V. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37; *Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 55, and *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C No. 126, para. 63.

³⁸ Offences Against the Person Act, Ch. 141 (case file of appendices to the answer to the application, volume I, appendix 23, folio 2980).

crime of murder.³⁹ The dispute lies as to whether the imposition of a mandatory sentence of death is contrary to the American Convention.⁴⁰

50. In interpreting the issue of death penalty in general, the Court has observed that Article 4(2) of the Convention allows for the deprivation of the right to life by the imposition of the death penalty in those countries that have not abolished it. That is, capital punishment is not *per se* incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.⁴¹ First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.⁴² Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.⁴³ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.⁴⁴

51. Specifically, in addressing the issue of mandatory death sentencing in other cases, the Court has held that the reference to “arbitrary” in Article 4(1) of the Convention and the reference to “the most serious crimes” in Article 4(2) render the imposition of mandatory death sentences incompatible with such provisions where the same penalty is imposed for conduct that can be vastly different, and where it is not restricted to the most serious crimes.⁴⁵

52. The provisions of the Convention regarding the imposition of the death penalty must

³⁹ The only exceptions to this rule include cases where the convicted person is less than 18 years of age or is a pregnant woman. *Cf.* Section 14 of the Juvenile Offenders Act (case file of appendices to the answer to the application, volume I, appendix 22, folio 2973) and Section 2 of the Sentence of Death (Expectant Mothers) Act (case file of appendices to the answer to the application, volume I, appendix 27, folio 3087).

⁴⁰ The State has repeatedly affirmed throughout this case that “the people of Barbados strongly believe in the effectiveness and validity of the death penalty as a criminal deterrent. The current Government was elected in part on the explicit platform of enforcing the death penalty. It was elected to uphold not just any form of the death penalty, but rather the current, mandatory form of capital punishment.” It emphasized that even if no death sentence has been carried out in Barbados since 1984, there is still very strong public support for mandatory capital punishment as a criminal deterrent. In this regard, the Court is aware of the information presented by the State providing evidence on the public opinion’s support for the death penalty in Barbados. However, pursuant to Articles 62 of the Convention and 1 of the Court’s Statute, the main purpose of this Tribunal, as a judicial institution, is “the application and interpretation of the American Convention on Human Rights.” The State of Barbados ratified the American Convention on November 27, 1982 and recognized the Court’s contentious jurisdiction on June 4, 2000 (*supra*, para. 30). Accordingly, pursuant to its duty to resolve cases properly brought before it, the Court must analyze whether Barbados’ system of capital punishment comports with the legal obligations the State has undertaken under the American Convention, in light of this Tribunal’s jurisprudence. In this way, the Court, as the final interpreter of the Convention, ensures that its *effet utile* is not reduced or annulled by the application of laws which, however popular they may be, are contrary to the Convention’s provisions, object and purpose. *Cf. Case of Dismissed Congressional Employees (Aguado Alfaro et al.) v. Perú. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2006. Series C No. 158, para. 128.

⁴¹ *Cf. Restrictions to the Death Penalty* (Arts. 4(2) and 4(4) American Convention on Human Rights), *supra* note 7.

⁴² *Cf. Case of Hilaire, Constantine and Benjamin et al. V. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para. 106, and *Case of Raxcacó Reyes*, *supra* note 37, para. 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 55.

⁴³ *Cf. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, paras. 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 37, para. 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 55.

⁴⁴ *Cf. Case of Fermín Ramírez*, *supra* note 37, para. 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 55, and *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 135.

⁴⁵ *Cf. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, paras. 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 37, paras. 81 and 82.

be interpreted (*supra* pars. 16 and 17) in view of the *pro persona* principle, that is to say, they should be interpreted in favor of the individual⁴⁶ as “imposing restrictions designed to delimit strictly its application and scope, in order to reduce the application of the death penalty to bring about its gradual disappearance”.⁴⁷

A.1) The limitation of the application of the death penalty to the “most serious crimes”

53. The Court has previously held that the

intentional and illicit deprivation of another’s life (intentional or premeditated murder, in the broad sense) can and must be recognized and addressed in criminal law under various categories (criminal classes) that correspond with the wide range of seriousness of the surrounding facts, taking into account the different facets that can come into play: a special relationship between the offender and the victim [e.g. infanticide], motives for the behavior [e.g. for reward or remunerative promise], the circumstances under which the crime is committed [e.g. brutality], the means employed by the offender [e.g. poison], etc. This approach allows for a graduated assessment of the seriousness of the offence, so that it will bear an appropriate relation to the graduated levels of gravity of the applicable punishment.⁴⁸

54. Thus, the Convention reserves the most severe form of punishment for the most severe illicit acts. Nevertheless, as stated previously, Section 2 of the Offences Against the Person Act simply states that where a person is found guilty of murder, that person shall be sentenced to death. Regardless of the manner in which the murder is committed or the means employed, the penalty is the same for all murders in Barbados. That is, the Offences Against the Persons Act of Barbados fails to differentiate between intentional killings punishable by death, and intentional killings (not merely manslaughter or other lesser form of homicide)⁴⁹ that would not be punishable by death. Rather, the Offences Against the Person Act “compels the indiscriminate imposition of the same punishment for conduct that can be vastly different”.⁵⁰

55. Consequently, the Court considers that Section 2 of the Offences Against the Person Act of Barbados does not confine the application of the death penalty to the most serious crimes, in contravention with Article 4(2) of the Convention.

A.2) The arbitrariness of the mandatory death penalty

56. The State argued that the imposition of its mandatory death penalty for the crime of murder in Barbados is not arbitrary, within the meaning of Article 4(1) of the Convention, precisely because it is lawfully sanctioned, as opposed to “*ad hoc* executions administered

⁴⁶ Cf. *Case of the 19 Merchants V. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 173; *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*, *supra* note 40, para. 77, and *Case of the Massacre of Pueblo Bello V. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 59.

⁴⁷ *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 99, and *Case of Raxcacó Reyes*, *supra* note 37, para. 56. See also *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 57.

⁴⁸ *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 102.

⁴⁹ Killings which otherwise would constitute murder in Barbados are subject to lesser punishments in the following areas: attempted murder, threatening murder through letters, conspiracy to murder, aiding suicide, acting in pursuance of a suicide pact and infanticide. Cf. *Offenses Against the Person Act*, *supra* note 38, ss. 2 and 9-14, (folios 2980 and 2983-2984).

⁵⁰ Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 103.

outside of the realm of law". To support its argument, the State asserted that "the Barbadian criminal justice system allows every person accused of a crime of murder or treason the full range of due process rights and procedures, access to common law and statutory defenses and exceptions, and judges each person's guilt or innocence at law individually. Further, the Barbados Privy Council examines all of the considerations that may be said to apply to the individual – looking at that person in her or his unique circumstances – in order to decide whether to commute the death sentence".

57. Although the Court agrees that extrajudicial executions are, by definition, arbitrary and contrary to Article 4(1) of the Convention,⁵¹ the State is incorrect to assume that a lawfully sanctioned death sentence may not also be arbitrary. A lawfully sanctioned mandatory sentence of death may be arbitrary where the law fails to distinguish the possibility of different degrees of culpability of the offender and fails to individually consider the particular circumstances of the crime. Section 2 of the Offences Against the Person Act in Barbados lawfully sanctions the death penalty as the one and only possible sentence for the crime of murder⁵², and the law does not allow the imposition of a lesser sentence in consideration of the particular characteristics of the crime (*supra* pars. 49-61), or the participation and degree of culpability of the defendant.

58. In this regard, the Court has previously held that to consider all persons responsible for murder as deserving of the death penalty, "treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty."⁵³

59. Evidently, the State is correct in asserting that the strict observation of certain due process rights and procedures are essential in evaluating whether the death penalty has been imposed arbitrarily.⁵⁴ Nevertheless, a distinction should be made between the sentencing stage and the availability and observance of such procedures during the whole proceedings of a capital case, including the appeals process. In accordance with the law in Barbados, the availability of statutory and common law defenses and exceptions for defendants in death penalty cases are relevant only for the determination of the guilt or innocence of the accused, not for the determination of the appropriate punishment that should be imposed once a person has been convicted. That is, a defendant in a capital

⁵¹ Cf. *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 25; *Case of Escué Zapata V. Colombia. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165, and *Case of La Rochela Massacre V. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163.

⁵² The definition of murder is not provided in any written law, as it remains a common law offence, and it is understood that "[m]urder is committed where a person of sound mind and the age of discretion unlawfully kills any reasonable creature in being under the Queen's peace with malice aforethought either expressed by that person or implied by law, so that the party wounded or hurt dies of that wound or hurt within a year and a day of same". Cf. Definition of murder in Final written submissions of the State (merits case file, volume III, folio 848). Moreover, a person who "aids, abets, counsels, procures or incites another to commit [murder] is guilty of [such] offence and may be proceeded against and punished as a principal offender". Cf. *Offenses Against the Person Act*, *supra* note 38, s. 45, (folio 2992).

⁵³ Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 105, citing *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). The Supreme Court of the United States of America held that the mandatory death penalty constituted a violation of the due process guarantees of the Fourteenth Amendment and the right to not be subjected to cruel and unusual punishment of the Eighth Amendment of the Constitution of the United States of America. The Court also indicated that the imposition of the death penalty generally necessitates a consideration of the relevant facets of the character and record of the individual offender and the circumstances of the particular offence.

⁵⁴ In Advisory Opinion OC-16/99, the Court made it clear that when due process guarantees are affected the "imposition of the death penalty is a violation of the right not to be 'arbitrarily' deprived of one's life, in the terms of the relevant provisions of the human rights treaties (e.g. The American Convention on Human Rights, Article 4 [...]) with the juridical consequences inherent in a violation of this nature i.e., those pertaining to the international responsibility of the State and the duty to make reparations". Cf. *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, *supra* note 44, para. 137.

punishment case may attempt to escape a guilty verdict by claiming certain common law defenses to a charge of murder.⁵⁵ These defenses seek to escape a conviction for murder and replace it with one for manslaughter, for example, which carries a sentence of life imprisonment, or even to totally exclude criminal liability for murder.⁵⁶ Nevertheless, if and when a defendant is found guilty of the crime of murder, the law does not allow the judge any latitude to consider the degree of culpability of the defendant or other forms of punishment that may be better suited for that particular person in light of all circumstances. That is, courts have no authority to individualize the sentence in conformity with information of the offence (*supra* pars. 54) and the offender.

60. The State has argued that the unique circumstances of the individual and of the crime are taken into account by the executive branch, which, through the recommendation of the Barbados Privy Council,⁵⁷ may decide to commute a death sentence (*supra* par. 20). In this regard, the Court considers that a distinction must also be made between the right under Article 4(6) of the Convention of every convicted person to “apply for amnesty, pardon, or commutation of sentence”, and the right recognized in Article 4(2) to have a “competent court” determine whether the death penalty is the appropriate sentence in each case, in accordance with domestic law and the American Convention. That is, sentencing is a judicial function. The executive branch may grant pardon or commutation of a sentence already imposed, but the judicial branch may not be stripped away of its responsibility to impose the appropriate sentence for a particular crime. In the present case, the judicial branch had no other option than to sentence the four alleged victims to death when they were found guilty of murder, and no judicial review of the actual punishment of death was allowed because it is a punishment specifically fixed by law.⁵⁸

61. In sum, regardless of the available defenses for the determination of a murder conviction, and despite the possibility to apply to the executive branch for a commutation of a death sentence, the Court considers that “in the determination of punishment, [the Offences Against the Person Act] mechanically and generically imposes the death penalty for all persons found guilty of murder”.⁵⁹ This is in contravention of the prohibition of the

⁵⁵ Cf. *Offences Against the Person Act*, (defining, for example, diminished responsibility and provocation), *supra* note 38, ss. 4 and 5, (folios 2980-82).

⁵⁶ Cf. *Offences Against the Person Act*, *supra* note 38, s. 6, (folio 2982).

⁵⁷ Article 78 of Barbados Constitution provides for the Barbados Privy Council to advise the Governor-General in his duty to exercise the prerogative of mercy, through which he may grant a pardon or respite, substitute a less severe form of punishment for that imposed on any person for such an offence, or remit the whole or part of any punishment or any other penalty or forfeiture. The Governor-General appoints the members of the Barbados Privy Council, also known as the Mercy Committee, after consultation with the Prime Minister. Currently, the Mercy Committee is composed of members from the executive branch, the academia, the church and the private sector. Members serve for a term of office that should not exceed 15 years or until the age of 75. However, the Governor-General can revoke their appointment after consultation with the Prime Minister. Cf. The Constitution of Barbados, Chapter VI, Executive Powers, ss. 76, 77 and 78 (case file of appendices to the answer to the application, volume I, appendix 17, folios 2840-2841), and Final written submissions of the State (merits case file, volume III, folio 874).

⁵⁸ After a murder conviction, an appeal against conviction can be pursued to the Court of Appeal of Barbados, and following that, to the Judicial Committee of the Privy Council. Since 2005, the Caribbean Court of Justice replaced the latter. Grounds for appeal to the Court of Appeal are based on questions of law, fact, mixed law and fact, or any other grounds sufficient for appeal, and in mandatory death penalty cases, it is an appeal against the conviction, not the death sentence, which is specifically fixed and mandated by law. Grounds for appeal to the Judicial Committee of the Privy Council were based on questions of law, interpretation of the Constitution, general or public importance, and mixed law and fact. Cf. *Criminal Appeal Act*, Ch. 113A (case file of appendices to the final written submissions presented by all parties, folios 6867 and 6887). Grounds for appeal to the Caribbean Court of Justice on criminal proceedings are mainly based on the interpretation of the Constitution. Cf. *Caribbean Court of Justice Act*, Ch. 117 (case file of appendices to the final written submissions presented by all parties, folios 6903-6904).

⁵⁹ *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 104. Cf. also *Case of Raxcacó Reyes*, *supra* note 37, para. 81.

arbitrary deprivation of the right to life recognized in Article 4(1) of the Convention, as it fails to individualize the sentence in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.⁶⁰

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62. In light of these facts, the Court concludes that because the *Offences Against the Person Act* submits all persons charged with murder to a judicial process in which the participation and degree of culpability of the accused and the individual circumstances of the crime are not considered, the aforementioned Act violates the prohibition against the arbitrary deprivation of life and fails to limit the application of the death penalty to the most serious crimes, in contravention of Article 4(1) and 4(2) of the Convention.

63. Therefore, the Court considers that Barbados has violated Article 4(1) and 4(2) of the Convention, in conjunction with Article 1(1) thereof, to the detriment of Messrs. Boyce, Joseph, Atkins, and Huggins.

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64. With regard to the Commission and representatives' allegations that the mandatory death penalty in Barbados is also in violation of Articles 5 and 8 of the Convention, this Court considers, as in previous cases,⁶¹ that the facts related to such allegations have already been examined in the preceding paragraphs in relation to the violation of Article 4 of the Convention (*supra*, paras. 49-63). Thus, it is unnecessary for the Court to address such further allegations.

IX FAILURE TO COMPLY WITH ARTICLE 2⁶² OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 1(1), 4(1), 4(2) AND 25(1)⁶³ THEREOF

65. In this chapter, the Court will address the parties' arguments regarding the following two issues: whether the death penalty legislation and the so-called "savings clause" of the Constitution of Barbados are incompatible with the American Convention.

66. The Commission argued that "failure of Barbados to amend or invalidate section 2 of the Offences Against the Person Act so as to bring its laws into compliance with the American Convention constitutes a *per se* violation of Article 2 of the Convention" as it is incompatible with Articles 4, 5, 8 and 1(1) of such instrument. Furthermore, the

⁶⁰ Similarly, the Human Rights Committee has highlighted in its concluding observations on Barbados that "it remains concerned that the State party's laws make the imposition of the death penalty mandatory in respect of certain crimes, thus depriving the sentencing court of any discretion in imposing the penalty in the light of all the circumstances of the case." UNHRC, *Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding Observations on Barbados* (Eighty-ninth session, 2007), CCPR/C/BRB/CO/3, May 11, 2007, para. 9.

⁶¹ Cf. *Case of Raxcacó Reyes*, *supra* note 37, para. 106.

⁶² In its relevant part, Article 2 stipulates that: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms".

⁶³ In its relevant part, Article 25 stipulates that: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties".

Commission alleged that the State is responsible for the violation of Article 2 of the Convention also in relation to section 26 of the Constitution of Barbados, which immunizes pre-constitutional laws from constitutional challenge, even if they allegedly violate fundamental rights.

67. The representatives also alleged that the State is responsible for a violation of Article 2 of the Convention, as it has failed to take any steps to bring section 2 of the Offences Against the Person Act into conformity with that instrument. Furthermore, the representatives alleged that the Barbadian Constitution immunizes any law that is deemed to be “an existing law” by section 26 of the Constitution from challenge on grounds of incompatibility with fundamental rights. Particularly, the representatives alleged that, since the Offences Against the Person Act is such a law, the mandatory death penalty cannot be challenged domestically on grounds of incompatibility with fundamental human rights, and therefore, this Court is the only forum that can address this issue.

68. The State alleged that a violation of Article 2 could only be found where there is a violation of some other right recognized in the Convention, and therefore, since the State alleges it has not incurred in any violation of the Convention, no violation of Article 2 could be found in the present case. Furthermore, the State submitted that its laws fully conform to the requirements of the Convention. Specifically, the State alleged that Section 26 does not, in and of itself, amount to a violation of Article 2 of the Convention as it does not prevent the amendment, repeal, or substitution of existing laws by Parliament, which is free to change any law. Finally, the State asserted that “no constitutional right can ever be violated by an existing law [such as Section 2 of the Offences Against the Person Act, as] all existing laws are *ipso facto* constitutional”.

69. The Court has previously held that a State Party to the Convention “must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires”.⁶⁴ The Court has also stated that, in complying with the general obligation to respect and guarantee rights, the States are obliged to “take affirmative action, avoid taking measures that restrict or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right.”⁶⁵ That is, pursuant to Article 2 of the American Convention, States not only have an affirmative obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognized in the Convention, they must also refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them.⁶⁶ These obligations derive from and are a natural consequence of the State’s ratification of the American Convention.

70. In light of the above, the Court will proceed to address the parties’ arguments in the following order: firstly, with regard to section 2 of the Offences Against the Person Act, and secondly, with regard to Section 26 of the Barbados’ Constitution.

⁶⁴ Cf. *Case of the “Last Temptation of Christ” (Olmedo-Bustos et al). Merits, Reparations, and Costs.* Judgment of February 5, 2001. Series C No. 73, para. 87; *Case of Zambrano Vélez et al. V. Ecuador. Merits, Reparations, and Costs.* Judgment July 4, 2007. Series C No. 166, para. 56, and *Case of La Cantuta V. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 171.

⁶⁵ Cf. *Juridical Condition and Rights of the Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 81.

⁶⁶ Cf. *Case of Castillo Petruzzi et al. V. Perú. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 207; *Case of Zambrano Vélez et al., supra* note 64, para. 57, and *Case of La Cantuta, supra* note 64, para. 172.

A. Section 2 of the Offences Against the Person Act

71. Section 2 of the Offences Against the Person Act 1994 (hereinafter "OAPA") reads: "[a]ny person convicted of murder shall be sentenced to, and suffer, death."⁶⁷ The Court has already declared that such arbitrary imposition of the ultimate and irreversible penalty of death without consideration for the particular circumstances of the crime and the degree of culpability and participation of the offender, violates the rights recognized under Article 4(1) and 4(2) of the Convention, in conjunction with Article 1(1) of said instrument (*supra*, paras. 62 and 63).

72. In analyzing this issue from the perspective of Article 2 of the Convention, the Court considers that, but for the existence of section 2 of OAPA, the alleged victims would not have had their right to life infringed (*supra*, paras. 49-63). Section 2 of OAPA is thus a law that impedes the exercise of the right not to be arbitrarily deprived of life, and as such, is *per se*⁶⁸ contrary to the Convention and the State has a duty to eliminate or modify it pursuant to Article 2 of such instrument.

73. Furthermore, in the present case, the law in question does not merely exist formally, which is sufficient for the Court to declare a violation of the Convention. It has been applied to the four alleged victims by way of judgment. The State effectively decided that the lives of these four individuals "shall" be taken. Furthermore, additional actions were taken to carry out the sentence, such as reading death warrants to all alleged victims, on two separate occasions each (*infra* paras. 103-116). In essence, Section 2 directly affected the four alleged victims on more than one occasion.

74. Thus, the Court considers that, even though none of the alleged victims have been executed, the State has failed to comply with Article 2 of the Convention by both maintaining, *per se*, and also applying to the alleged victims, a law that restricts their rights recognized under Article 4 of such instrument (*supra*, paras. 49-63).

B. Section 26 of Barbados' Constitution

75. Section 26⁶⁹ of Barbados' Constitution prevents courts from declaring the unconstitutionality of current laws that were enacted or made before the Constitution came into force on November 30, 1966. It is referred to as the "savings clause" because it effectively "saves" such laws from constitutional scrutiny. In effect, Section 26 immunizes pre-constitution laws that are still in effect from constitutional challenge even if the purpose of such challenge is to analyze whether the law violates fundamental rights and freedoms. Such is the case with section 2 of OAPA, which has existed since the enactment of the

⁶⁷ *Offences Against the Person Act*, *supra* note 38, (folio 2980).

⁶⁸ The Court has held on previous occasions that a law may *per se* violate the American Convention. *Cf. Case of Suárez*, *supra* note 37, para. 98; *Case of La Cantuta*, *supra* note 64, paras. 167 and 174, and *Case of Almonacid Arellano et al.*, *supra* note 18, para. 119. See also *Certain Attributes of the Inter-American Commission on Human Rights* (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights). Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26, and *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, paras. 41-43.

⁶⁹ Section 26 of Barbados' Constitution reads, in relevant part: "Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question – (a) is a law (in this section referred to as "an existing law") that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day [...]" *Cf. The Constitution of Barbados*, *supra* note 57, s. 26 (folio 2810).

Offences Against the Person Act of 1868.⁷⁰ That is, section 2 of OAPA is a law that existed before the current Constitution came into force, and continues to be the law of Barbados. Thus, by virtue of the “savings clause”, the constitutionality of Section 2 of OAPA may not be challenged domestically.

76. This restriction on judicial scrutiny was addressed in 2004 by the then highest appellate court of Barbados, the Judicial Committee of the Privy Council, which held in *Boyce and Joseph v. The Queen* that domestic courts could not hold that section 2 of OAPA is inconsistent with section 15(1) of the Barbados Constitution, which condemns inhuman or degrading treatment, because the law was an “existing law” within the meaning of section 26 of the Constitution.⁷¹ Nevertheless, the JCPC also observed that,⁷² where it not for the savings clause, it would have declared that the mandatory death penalty is contrary to the constitutional right not to be subjected to cruel, inhuman and degrading punishment.⁷³

77. The Court observes that the aforementioned conclusion of the JCPC was arrived at by a purely constitutional analysis that did not take into account the State’s obligations under the American Convention as interpreted by this Court’s jurisprudence. In accordance with the Vienna Convention on the Law of Treaties, Barbados is bound to comply with its obligations under the American Convention in good faith,⁷⁴ and it may not invoke the provisions of its internal law as justification for its failure to comply with its treaty obligations.⁷⁵ In the present case, the State is precisely invoking provisions of its internal law for such purposes.

78. The analysis of the JCPC should not have been limited to the issue of whether the OAPA was unconstitutional. Rather, the question should have also been whether it was “conventional”. That is, Barbadian courts, including the JCPC, and now the Caribbean Court of Justice, must also address whether the law in Barbados restricts or violates the rights recognized in the Convention. In this regard, the Court has previously held that

the Judiciary must exercise a sort of ‘conventionality control’ between the domestic legal provisions [...] and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the

⁷⁰ Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Lennox Ricardo Boyce and Jeffrey Joseph v. The Queen* (July 7, 2004), Privy Council Appeal No. 99 of 2002, paras. 8-9 (case file of appendices to the application, volume II, appendix B.2, folio 867).

⁷¹ Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Lennox Ricardo Boyce and Jeffrey Joseph v. The Queen*, *supra* note 70, (folios 872-875).

⁷² See the majority judgment delivered by Lord Hoffmann: “[T]heir Lordships feel bound to approach this appeal in the footing that the mandatory death penalty is inconsistent with the international obligations of Barbados[.] If their Lordships were called upon to construe section 15(1) of the Constitution [the prohibition on inhuman and degrading treatment], they would be of opinion that it was inconsistent with a mandatory death penalty for murder. The reasoning of the Board in *Reyes v. The Queen* [2002] 2 AC 235, which was in turn heavily influenced by developments in international human rights law and the jurisprudence of a number of other countries, including states in the Caribbean, is applicable and compelling[.] [However] if one reads section 26 [of the Constitution] together with section 1 [of the Constitution], it discloses a clear constitutional policy[.] No existing written law is to be held to be inconsistent with sections 12 to 23 [the fundamental rights provisions]. Existing laws are to be immunised from constitutional challenge on that ground.” Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Lennox Ricardo Boyce and Jeffrey Joseph v. The Queen*, *supra* note 70, paras. 25, 27 and 31, (folios 872-875).

⁷³ Although this Court has not declared that the mandatory sentence of death for the crime of murder in Barbados is contrary to the fundamental right not to be subjected to cruel, inhuman or degrading treatment or punishment *per se*, the Tribunal agrees with the rationale of the Judicial Committee of the Privy Council in that a fundamental right is at stake, namely, the right not to be arbitrarily deprived of your life.

⁷⁴ Article 26 of the *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, 8 ILM 679 (entered into force 27 January 1980).

⁷⁵ Article 27 of the *Vienna Convention on the Law of Treaties*, *supra* note 74.

interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.⁷⁶

79. Accordingly, the Court has found on previous occasions that a similar “savings clause” found in the Constitution of Trinidad and Tobago had the effect of protecting from judicial scrutiny certain laws that would otherwise breach fundamental rights.⁷⁷ Similarly, in the present case, section 26 of the Constitution of Barbados effectively denies its citizens in general, and the alleged victims in particular, the right to seek judicial protection against violations of their right to life.

80. Accordingly, in light of the Court’s jurisprudence, and to the extent that section 26 of the Constitution of Barbados prevents judicial scrutiny over section 2 of the Offences Against the Person Act, which in turn violates the right not to be arbitrarily deprived of life, the Court finds that the State has failed to abide by its obligations under Article 2 of the Convention, in relation to Articles 1(1), 4(1), 4(2) and 25(1) of such instrument.

X
VIOLATION OF ARTICLES 5(1)⁷⁸ AND 5(2)⁷⁹ OF THE AMERICAN CONVENTION
IN CONJUNCTION WITH ARTICLE 1(1) THEREOF

81. In this chapter the Court will address the parties’ arguments regarding the following three issues: 1) whether the method of judicial execution by hanging in Barbados violates the prohibition of cruel, inhuman or degrading punishment, 2) whether the conditions of detention of the four alleged victims violated their right to personal integrity, and 3) whether the State further violated the alleged victims’ rights to life and personal integrity by allegedly reading warrants of executions to them while their appeals were pending.

A. Method of Execution of Death by Hanging

82. The representatives alleged that the execution of a death sentence by hanging as provided by Barbados law constitutes cruel and inhuman treatment or punishment in violation of Article 5(1) and 5(2) of the American Convention “as it exposes the condemned man to prolonged and unnecessary suffering, there is a risk of a long drawn out, extremely painful and possibly gruesome death due to the possibility of death by strangulation or full or partial decapitation”. The representatives contended that although none of the alleged victims have been hanged, the violation of their right not to be subjected to cruel and inhuman punishment was violated at the moment the death warrants were read to them. As for Mr. Huggins, the representatives allege that he still faces death by hanging, as his sentence of death has not been commuted.

83. The Inter-American Commission did not allege a violation of the Convention based on the method of execution in use in Barbados, namely death by hanging. However, it is now well established in the Tribunal’s jurisprudence that once the Commission has initiated

⁷⁶ *Case of Almonacid Arellano et al.*, *supra* note 18, para. 124. *Cf.* also *Case of La Cantuta*, *supra* note 64, para. 173.

⁷⁷ *Cf. Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, para. 152(c), and *Case of Caesar V. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of March 11, 2005. Series C No. 123, paras. 115-117.

⁷⁸ In its relevant part, Article 5 stipulates that: “Every person has the right to have his physical, mental, and moral integrity respected”.

⁷⁹ Article 5 establishes in the pertinent part that: “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”.

the proceedings, the representatives may argue violations of the Convention other than those alleged by the Commission, as long as such legal arguments are based upon the facts set out in the application.⁸⁰ Moreover, this Tribunal highlights the fact that the State was given due opportunity to answer all legal arguments put forward by the representatives at all stages of the proceedings.

84. The State argued that it had reserved the right to use hanging as a method of execution in its reservation to the American Convention, and, alternatively, that issues related to hanging are no longer relevant and are moot, as none of the alleged victims will be hanged.⁸¹ Furthermore, the State argued that the medical evidence submitted by the representatives with regard to the judicial hangings “should be given little weight” by the Court, as it is “primarily anecdotal and by its own admission is highly subjective in nature. Further, even if taken at face value, this medical evidence does not support the view that hanging is a cruel and inhuman form of execution.”

85. The Court has already declared that the mandatory imposition of the sentence of death violated the alleged victims’ right not to be arbitrarily deprived of life (*supra*, para. 62). This conclusion is not affected by the particular method of execution by which the death penalty may be carried out. Thus, the Court does not find it necessary to address whether the particular method of execution by hanging would also be in violation of the American Convention.

B. Conditions of Detention

86. The Commission alleged that the prison conditions in which the State has detained the alleged victims “must simply be characterized as inhuman”, and thus constitute a violation of Article 5(1) and 5(2) of the Convention. The representatives similarly argued that “the conditions in which the alleged victims have been and continue to be detained, in particular in relation to the lack of privacy, being kept in cages, the lack of contact with the outside world, use of the slop buckets, and the lack of natural light and exercise, constitute inhuman and degrading treatment and fail to respect the human dignity of the person and so are contrary to Article 5 of the [American Convention]”.

87. The State affirmed that “its prison system fully respects the rights of those imprisoned to live in conditions of detention compatible with their personal dignity.” Furthermore, it considered that even if conditions at Glendairy and Harrison’s Point were imperfect, they “did not fall below or violate international legal standards, within or outside the hemisphere”. Finally, Barbados stated that it “upholds the standards of the UN Standard Minimum Rules for the Treatment of Prisoners to the maximum extent permitted by its level of economic development”.

88. The Court has previously examined in other cases the obligation that States Parties to the Convention have, as guarantors of the rights of people under their custody, to provide adequate prison conditions in accordance with Article 5 of the Convention and as

⁸⁰ Cf. *Case of the Five Pensioners. Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of Escué Zapata*, *supra* note 51, para. 92, and *Case of Bueno Alves V. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 164, para. 121.

⁸¹ The State’s arguments regarding the effects of its reservation to the Convention, as well as the alleged mootness of the issue of hanging, have been addressed by the Court in chapter III of this Judgment (*supra*, para. 17). The Court hereby reiterates that the State’s reservation was not specifically intended to exclude the issue of execution by hanging from the Court’s jurisdiction, and that the alleged violation of Article 5 of the Convention in this context would have occurred, not only at the moment of execution, but also at the moment of the reading of the warrants of execution.

interpreted in light of minimum international standards in this area.⁸² Pursuant to Article 5 of the Convention, all detained persons have the right to live in conditions compatible with the inherent dignity of every human being.⁸³ This entails a duty upon States to ensure that the manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention, and that the detainees' health and welfare are adequately safeguarded.⁸⁴ A failure to do so may result in a violation of the absolute prohibition of cruel, inhuman or degrading punishment or treatment.⁸⁵ In this regard, States may not invoke economic hardships to justify imprisonment conditions that do not conform to the very minimum international standards in this area and that fail to respect the inherent dignity of human beings.⁸⁶

89. In light of the above, the Court will proceed to analyze the prison conditions in the two detention centers where the alleged victims have been held, namely, Glendairy Prison and Harrison's Point Temporary Prison.

B.1) Conditions of Detention at Glendairy Prison

90. All four alleged victims were detained at Glendairy Prison from the moment of their respective arrests or detentions⁸⁷ until March 29, 2005, when the prison was destroyed in a fire.⁸⁸ Nevertheless, because Barbados recognized the compulsory jurisdiction of this Tribunal on June 4, 2000, the Court will proceed to analyze their prison conditions at Glendairy Prison during the four and a half years that fall within the Court's jurisdiction *ratione temporis* (*supra*, para. 30).

91. Glendairy Prison was built in 1855 as Barbados' sole adult prison to hold between 245 and 350 prisoners, both male and female.⁸⁹ As of March 2005, the total population of

⁸² Cf. *Case of Neira Alegría et al. V. Perú. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Case of Penal Miguel Castro Castro, supra* note 24, para. 315, and *Case of Montero Aranguren et al. (Detention Center of Catia) V. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, paras. 85 and 87.

⁸³ Cf. *Case of Neira Alegría et al., supra* note 82, para. 60; *Case of Penal Miguel Castro Castro, supra* note 24, para. 315, and *Case of Montero Aranguren et al. (Detention Center of Catia), supra* note 82, para. 85.

⁸⁴ 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; *Case of Montero Aranguren et al. (Detention Center of Catia), supra* note 82, para. 86, and *Case of López Álvarez V. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 104. See also *UN Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 57.

⁸⁵ Cf. *Case of Cantoral Benavides V. Perú. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 95; *Case of Bueno Alves, supra* note 80, para. 76, and *Case of the Miguel Castro Castro Prison, supra* note 24, para. 271.

⁸⁶ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia), supra* note 82, para. 85. See also ECHR, *Case of I.I v Bulgaria*. Judgment of 9 June 2005. Application No. 44082/98, para. 77; ECHR, *Case of Poltoratskiy v. Ukraine*. Judgment of 29 April 2003. Application No. 38812/97, para. 148, and UNHRC, *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), para. 9.3.

⁸⁷ Messrs. Boyce and Joseph were arrested on or about April 11, 1999 (case file of appendices to the application, volume II, appendix B.1, folios 497-500); Mr. Atkins was arrested on October 16, 1998 (case file of appendices to the application, volume III, appendix B.7, folios 1337), and Mr. Huggins was arrested on December 6, 1999 (case file of appendices to the application, volume III, appendix B.9, folios 1466-1467).

⁸⁸ The fire is currently being investigated by the State. Cf. Affidavit of John Nurse, December 14, 2006 (case file of appendices of the answer to the application, volume VII, appendix 172, folio 6562); Testimony of John Nurse, public hearing at the Court held on July 11, 2007 (transcription, pg. 40), and Expert opinion of Prof. Andrew Coyle, public hearing at the Court held on July 11, 2007 (transcription, pg. 55).

⁸⁹ Cf. Affidavit of John Nurse, March 8, 2005 (case file of appendices to the answer to the application, volume VII, appendix 171, folio 6555); Testimony of John Nurse, *supra* note 88, (transcription, pg. 43), and United

prisoners held in Glendairy had grown to 994, or more than three times its maximum capacity, of which 942 were male and 52 were female.⁹⁰ The staff consisted of a total of 282 employees.⁹¹

92. Prisoners sentenced to death at Glendairy Prison were held in the maximum risk area. The cells in this area measured ten feet five inches in length, five feet in width and ten feet two inches in height. Cellblocks were lit by a light bulb. The outer cells, where Mr. Atkins was held, had windows. Messrs. Joseph, Boyce and Huggins were housed in inner cells that had no windows. In these inner cells, ventilation was provided through the doors of the cells, which opened onto a corridor.⁹² The alleged victims had to use what are known as "slop buckets" to urinate and defecate in, which were emptied twice a day, once in the morning and again in the evening, and at other times upon special request.⁹³ The alleged victims would stay in their cells at least 23 hours a day.⁹⁴

93. The evidence submitted in this case demonstrates that by 2005 the prisoner population at Glendairy had exceeded three times its capacity. In this regard, the Court observes that overcrowded conditions at a detention center may cause detrimental effects on the whole prison population, including prisoners who, as in the case at hand, are held in single cells. Such conditions can result in a reduction of out-of-cell activities, overburdened health care services, hygienic problems and reduced accessibility to washroom and toilet facilities.⁹⁵ As a result of this overcrowding, Mr. Joseph on some occasions received only 15 minutes per day of exercise, and Mr. Huggins received no exercise time at all on some occasions.⁹⁶

94. The Court considers that the combined conditions of detention, particularly the use of a slop-bucket, the lack of adequate lightning and ventilation, and the fact that the alleged victims had to stay in their jail cells for 23 hours of each day for more than four years, as well as the overcrowded conditions, together amount to treatment contrary to the dignity of every human being, and thus constitutes a violation of Articles 5(1) and 5(2) of the American Convention, in conjunction with Article 1 of the same instrument, to the detriment of Messrs. Boyce, Joseph, Atkins and Huggins.⁹⁷

States of America: Country Reports on Human Rights Practices: Barbados 2001 (case file of appendices to the application, volume IV, appendix C.4, folios 1542).

⁹⁰ Cf. Affidavit of John Nurse, *supra* note 89, (folios 6554-6555); Testimony of John Nurse, *supra* note 88, (transcription, pg. 43-44); Report to the National Commission on Law and Order, June 2004 (appointed by decision made by the Cabinet of Ministers of Barbados on September 19, 2002), Chapter 7, pg. 123, available at <http://www.publicworks.gov.bb/Docs/lawprind.pdf> (last visited on October 16, 2007), and press release, "Prison Roll Jumps to 900", October 10, 2002 (case file of appendices to the application, volume IV, appendix C.2, folios 1527-1528).

⁹¹ Cf. Affidavit of John Nurse, *supra* note 89, (folio 6555), and Report to the National Commission on Law and Order, *supra* note 90.

⁹² Cf. Affidavits of Lennox Boyce, Jeffrey Joseph, Frederick Atkins and Michael Huggins on the conditions of confinement, August 17, 2004 (case file of appendices to the application, volume IV, appendix D.2, folios 1566-1577); Affidavit of John Nurse, *supra* note 89, (folios 6554-6556), and Testimony of John Nurse, *supra* note 88, (transcription, pg. 48-49).

⁹³ Cf. Affidavits of Lennox Boyce, Jeffrey Joseph, Frederick Atkins and Michael Huggins on the conditions of confinement, *supra* note 92, and Affidavit of John Nurse, *supra* note 89, (folios 6555).

⁹⁴ Cf. Affidavits of Lennox Boyce, Jeffrey Joseph, Frederick Atkins and Michael Huggins on the conditions of confinement, *supra* note 92, and Affidavit of John Nurse, *supra* note 89, (folios 6556).

⁹⁵ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia)*, *supra* note 82, para. 90. See also CPT/Inf (92) 3 [EN], 2nd General Report, 13 April 1992, para. 50.

⁹⁶ Cf. Affidavit of Jeffrey Joseph, *supra* note 34, (folio 1570), and Affidavit of Michael Huggins, *supra* note 36, folio 1576).

⁹⁷ Cf. *Case of Neira Alegría et al.*, *supra* note 82, para. 60; *Case of the Miguel Castro Castro Prison*, *supra* note 24, para. 315, and *Case of Montero Aranguren et al. (Detention Center of Catia)*, *supra* note 82, para. 97.

B.2) Conditions of Detention at Harrison's Point Temporary Prison

95. Pursuant to the fire that destroyed Glendairy Prison on March 29, 2005, all prisoners were removed to two temporary prison facilities.⁹⁸ All four alleged victims were at first taken to a temporary prison at St. Ann's Fort and then transferred to Harrison's Point Prison on June 18, 2005.⁹⁹ Mr. Atkins remained in detention there until he was transferred to a hospital on October 23, 2005 where he died seven days later as a result of an illness.¹⁰⁰ Messrs. Boyce, Joseph and Huggins are still detained at Harrison's Point Temporary Prison.

96. Harrison's Point Temporary Prison was once a United States of America military base and, after the fire at Glendairy, it was rapidly reconfigured to serve as a prison, but is not a permanent facility.¹⁰¹ As of July 6, 2007 it held 990 male prisoners and 49 females.¹⁰² The prison is staffed by 274 employees and the Barbados Police force provides security outside each unit.¹⁰³

97. The Court considers that three aspects of the conditions of detention in this temporary prison are particularly troubling. Firstly, the alleged victims have been held for more than two and a half years in cells that resemble cages.¹⁰⁴ There are no walls or ceiling that may provide them with at least some measure of privacy. Rather, prisoners and officers can easily observe the alleged victims at all times through the grilled bars, including when using the slop bucket. Even if deprivation of liberty entails certain limitations to the enjoyment of the right to personal privacy, the Court is of the view that keeping detainees in "cages" cannot but infringe the right to be treated humanely. Secondly, during this time the alleged victims have not had proper time to exercise or leave their cells. At most, they are allowed out into the yard once a week.¹⁰⁵ They must remain in their cages at all other times, except for 15 minutes every day when they may use the bathrooms and showers.¹⁰⁶ Finally, the alleged victims have not had direct contact either with family members or friends since at least March of 2005, and are allowed, in theory, limited visual contact with them by way of a video conferencing system.¹⁰⁷ On other occasions, the Court has indicated

⁹⁸ Cf. Affidavit of John Nurse, *supra* note 88.

⁹⁹ Cf. Affidavit of John Nurse, *supra* note 88.

¹⁰⁰ Cf. Death Certificate of Victim Frederick Atkins (case file of appendices to the answer to the application, volume VII, appendix 176, folios 6579-6581).

¹⁰¹ Cf. Testimony of John Nurse, *supra* note 88, (transcription, pg. 42), and Expert opinion of Prof. Andrew Coyle, *supra* note 88, (transcription, pg. 52 and 54).

¹⁰² Cf. Expert opinion of Prof. Andrew Coyle, *supra* note 88, (transcription, pg. 52).

¹⁰³ Cf. Affidavit of John Nurse, *supra* note 89, (folio 6555), and Testimony of John Nurse, *supra* note 88, (transcription, pg. 41).

¹⁰⁴ Cf. Affidavit of Lennox Boyce on prison conditions at Harrison's Point, June 1, 2007 (case file of affidavits and observations thereto, appendix 2, folio 6620); Affidavit of Jeffrey Joseph on prison conditions at Harrison's Point, June 1, 2007 (case file of affidavits and observations thereto, appendix 3, folio 6630); Affidavit of Michael Huggins on prison conditions at Harrison's Point, June 1, 2007 (case file of affidavits and observations thereto, appendix 4, folio 6641); Expert opinion of Prof. Andrew Coyle, *supra* note 88, (transcription, pg. 52), and Testimony of John Nurse, *supra* note 88, (transcription, pg. 42).

¹⁰⁵ Cf. Expert opinion of Prof. Andrew Coyle, *supra* note 88, (transcription, pg. 53), Affidavit of Lennox Boyce on prison conditions at Harrison's Point, *supra* note 104, (folio 6622-6623); Affidavit of Jeffrey Joseph on prison conditions at Harrison's Point, *supra* note 104, (folio 6633), and Affidavit of Michael Huggins on prison conditions at Harrison's Point, *supra* note 104, (folio 6644).

¹⁰⁶ Cf. Testimony of John Nurse, *supra* note 88, (transcription, pg. 36); Affidavit of Lennox Boyce on prison conditions at Harrison's Point, *supra* note 104, (folio 6621-6622); Affidavit of Jeffrey Joseph on prison conditions at Harrison's Point, *supra* note 104, (folio 6632), and Affidavit of Michael Huggins on prison conditions at Harrison's Point, *supra* note 104, (folio 6643).

¹⁰⁷ Cf. Expert opinion of Prof. Andrew Coyle, *supra* note 88, (transcription, pg. 53-54); Testimony of John Nurse, *supra* note 88, (transcription, pg. 42), and Affidavit of Lennox Boyce on prison conditions at Harrison's Point, *supra* note 104, (folio 6623); Affidavit of Jeffrey Joseph on prison conditions at Harrison's Point, *supra* note 104, (folio 6633), and Affidavit of Michael Huggins on prison conditions at Harrison's Point, *supra* note 104, (folio 6644).

that undue restrictions in visiting regimes may constitute a violation of the right to humane treatment.¹⁰⁸ Similarly, the European Court on Human Rights has acknowledged that

detention, likewise any other measure depriving a person of his liberty, entails inherent limitations on [the detainees'] private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family.¹⁰⁹

98. This Court acknowledges that Harrison's Point Temporary Prison was not designed to be a permanent detention center. Rather, it had to be reconfigured to become a prison due to the fire that destroyed Glendairy Prison on March 29, 2005. A new allegedly state-of-the-art permanent prison is currently under construction, which will allegedly have capacity for 1,250 prisoners, and was due to be completed in August 2007.¹¹⁰ As of the date of this Judgment, the Court has not been informed as to whether this prison facility has been completed or if the alleged victims have been transferred to it.

99. The Court also recognizes that the State is implementing a number of policies that will allegedly improve not only the conditions of detention of its prisoners, but also its penal system as a whole. For example, the State has asserted that it is attempting to address overcrowding through the Penal System Reform Act, which provides courts with a broader range of sentencing options. This, according to the State, will be accompanied by a "philosophical shift" towards a "policy based on the principles of restorative justice, with incarceration being reserved for the most serious offenders and those who pose a genuine threat to public safety."¹¹¹ Additionally, the State asserted that it will continue to implement an education component in its new prison, as it had previously done in Glendairy Prison. Finally, the State assured the Court that "the new prison facility will greatly improve the services available to, and living conditions of, prisoners in Barbados."

100. Although the Court appreciates the stated political will of the State to improve the conditions of detention of its prisoners and reform its penal system, the fact remains that the alleged victims in this case have already been detained at Harrison's Point Temporary Prison for more than two and a half years, where they have been subjected to conditions of detention that fail to respect their integrity and inherent dignity. A future change in their regime is not only desirable, but necessary; however, it will not give them back the time they have spent in deplorable conditions, with no privacy and little to no contact with their loved ones.

101. In this sense, Harrison's Point Temporary Prison has now been in operation for over two years, and in that time, prison conditions have not improved nor has the new prison under construction been finished. Therefore, Messrs. Boyce, Joseph and Huggins have remained in inhuman conditions for an unreasonable amount of time. Even under the circumstances described by the State, the absolute lack of privacy, coupled with an extremely deficient exercise regime and a complete disregard for the necessity of actual, not virtual, interaction with family members and friends, are conditions of detention that are

¹⁰⁸ Cf. *Case of Loayza Tamayo V. Perú. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 58; *Case of the "Juvenile Reeducation Institute"*, *supra* note 84, para. 154; *Case of the Miguel Castro Castro Prison*, *supra* note 24, para. 315, and *Case of García Asto and Ramírez Rojas V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, para. 221. Cf. also *UN Standard Minimum Rules for the Treatment of Prisoners*, *supra* note 84, Rules 10 and 11.

¹⁰⁹ ECHR, *Case of Bagiński V. Poland*, Judgment of October 11, 2005, Application No. 37444/97, para. 89.

¹¹⁰ Cf. Affidavit of John Nurse, *supra* note 88, (folio 6563), and Report and Opinion of Prof. Andrew Coyle (case file of appendices to the written final submissions of the parties, folio 6787).

¹¹¹ Cf. Final written submissions of the State (merits case file, volume III, folio 888).

clearly incompatible with the respect due to the dignity of every human being.¹¹²

102. The Court thus concludes that the conditions in which these three alleged victims have been and continue to be detained, in particular in relation to the lack of privacy, contact with the outside world, and exercise, as well as being kept in cages and forced to use slop buckets in plain view of others, amount to inhuman and degrading treatment and fail to respect the human dignity of the person, in contravention to Article 5(1) and 5(2) of the Convention, to the detriment of Messrs. Boyce, Joseph, Atkins and Huggins.

C. Reading of Warrants of Execution

103. Warrants of execution were read to all four alleged victims on two separate occasions informing them that they would be executed within seven days from such notice. The first reading of the warrants of executions allegedly occurred while their domestic appeals were pending. The second reading of the warrants of execution allegedly occurred while their petition before the Inter-American Commission was pending. Although none of the executions were carried out, the Commission argued that the alleged reading of warrants of execution to each of the victims on these two separate occasions prior to the completion of all their appeals and during the proceedings before the Inter-American System constituted a violation of Article 5(1) and 5(2) in conjunction with Article 1(1) of the Convention. The Commission considered essential that "litigants be able to complete their appeals at the national level, as well as [the] petition processes before [the Commission] before any execution could be carried out".

104. The representatives also argued that the two alleged attempts by the State to execute all four alleged victims whilst lawful domestic appeals and a petition to the Inter-American Commission were pending contravened their right to an appeal and not to be arbitrarily deprived of life, and was a cruel treatment that resulted in a violation of Articles 4(1), 4(2), 5(1), 5(2) and 8(2) of the American Convention in conjunction with Article 1(1) of the same. The representatives alleged that the first warrants were read even though the alleged victims had notified the authorities of their intention to file an appeal with the Judicial Committee of the Privy Council (hereinafter "JCPC"), and that they had asked the Barbados Privy Council (Mercy Committee) to consider their commutations only after the determination of the intended appeal. Furthermore, the representatives alleged that they reasonably relied on a communication by the State of Barbados' London Solicitors by which Messrs. Boyce and Joseph were informed they had until July 26, 2002 to lodge a petition before the JCPC, and that the petition was in fact submitted prior to that date. The representatives considered that it was "manifestly unfair" to have read the warrants of execution to Messrs. Boyce and Joseph under those circumstances. With regards to the reading of the second warrant of execution, the representatives mentioned that both the Barbados Court of Appeals and the Caribbean Court of Justice have ruled that the Mercy Committee should have awaited the conclusion of their petition before the Inter-American System before considering the commutation of the death sentences.

105. The State considered that the reading of warrants of execution constitutes part of the State's obligations to carry out executions in a timely manner so as not to cause cruel, inhuman or degrading treatment to those on death row. Furthermore, the State asserted that the appeals of Messrs. Joseph and Boyce to the Judicial Committee of the Privy Council were filed on July 25, 2002, nearly one month after the death warrants were read to the

¹¹² Cf. *Case of Loayza Tamayo*, *supra* note 108, para. 58; *Case of the "Juvenile Reeducation Institute"*, *supra* note 84, para. 154; *Case of the Miguel Castro Castro Prison*, *supra* note 24, para. 315, and *Case of García Asto and Ramírez Rojas*, *supra* note 108, para. 221.

alleged victims on June 26, 2002. Consequently, the State alleged that warrants of execution were read subsequent to the expiry of the time limits for filing of appeals to the JCPC, and that other deadlines suggested by third persons were neither authorized nor lawful. Thus, the State asserted that no warrants were read to them subsequent to the appeal of their cases to the JCPC. Additionally, the State submitted that domestic law in effect at the time the warrants were read did not recognize the alleged victims a right to file a petition with the Inter-American Commission nor to have a "legitimate expectation" not to be executed until such proceedings were completed. Nevertheless, the State recognized that such a "legitimate expectation" now exists in Barbados pursuant to the recent decision by the Caribbean Court of Justice in *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*.

106. The Court will first address the readings of the warrants of execution with regards to Messrs. Boyce and Joseph, and subsequently with regards to Messrs. Huggins and Atkins.

C.1) Reading of warrants of execution to Messrs. Boyce and Joseph

107. Two of the alleged victims, Messrs. Boyce and Joseph, raised before the Barbados Court of Appeal whether warrants were improperly read to them in 2002 after they had expressed an intention to appeal to the Judicial Committee of the Privy Council, and in 2004 while their petition before the Inter-American Commission was pending. Accordingly, on May 31, 2005 the Barbados Court of Appeal held that:

[the Barbados Privy Council's] advice in 2002 that [Messrs. Boyce and Joseph] be executed at a time when they had not exhausted their domestic remedies and had intimated their intention to appeal to the [Judicial Committee of the Privy Council], which they did, was manifestly unfair to the appellants and a denial of natural justice. Similarly, the [Barbados Privy Council's] advice in 2004 that the [Judicial Committee of the Privy Council's] Order be carried out without regard to the appellants' expressed intention to petition the [Inter-American Commission], which they did, was contrary to the binding authority of *Lewis*¹¹³, and therefore a denial of the appellants' rights. The death warrants were therefore improperly read to the appellants in both 2002 and 2004.¹¹⁴

108. The Barbados Court of Appeal then proceeded to order the commutation of the death sentences of Messrs. Boyce and Joseph to life imprisonment.¹¹⁵ That Court reasoned that such form of redress was proper in light of the following four factors: first, the five-year limit in which the State could have legally carried out the executions pursuant to the norm established in *Pratt (supra, para. 19)* was about to expire; second, both alleged victims had been read death warrants on two occasions, and therefore it would be "undesirable to expose [them] to a third reading of the death warrants and the likelihood of further court proceedings"; third, the difference in punishment regarding the sentence imposed to their co-accused who pleaded guilty to manslaughter for the same criminal act was disproportionate, and fourth, Messrs. Boyce and Joseph had "no access to adequate funding

¹¹³ Judgment delivered by the Judicial Committee of the Privy Council in *Neville Lewis v. Attorney General of Jamaica* (September 12, 2000) (holding, in relevant part, that the Barbados Privy Council was bound to await any pending decision of an international human rights body) (case file of appendices to the application, appendix A.7, folios 185-224).

¹¹⁴ Judgment delivered by the Barbados Court of Appeal in *Jeffrey Joseph and Lennox Ricardo Boyce v. The Attorney-General et al.*, *supra* note 13, (folios 965).

¹¹⁵ Judgment delivered by the Barbados Court of Appeal in *Jeffrey Joseph and Lennox Ricardo Boyce v. The Attorney-General et al.*, *supra* note 13, (folios 965).

to effectively pursue any further rights they may have".¹¹⁶

109. Similarly, this Tribunal considers that the first reading of the warrants of execution to Messrs. Boyce and Joseph violated their right to personal integrity, recognized in Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof. The Court further observes that said violation has already been addressed by the Barbados Court of Appeals with a favorable result to the alleged victims, whose death sentences were commuted to life imprisonment.

110. Subsequently, the State filed an appeal with the Caribbean Court of Justice¹¹⁷ (hereinafter "CCJ") against the decision of the Barbados Court of Appeals. This Tribunal observes that the Commission filed the application in the present case on June 23, 2006, before the CCJ had issued a final decision on the issue of the reading of warrants of execution. On November 8, 2006, the CCJ dismissed the State's appeal and, *inter alia*, upheld the commutation of the sentences of both Mr. Joseph and Mr. Boyce, and did not provide them with any additional compensation or other remedies.¹¹⁸ Furthermore, the CCJ held that Messrs. Boyce and Joseph had a "legitimate expectation" not to be executed - and thus not be read warrants of execution - before their international human rights petition procedures were completed, within a "reasonable time".¹¹⁹

111. In this sense, the Court also considers that the second reading of the warrants of execution to Messrs. Boyce and Joseph violated their right to personal integrity, in accordance with Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) of said instrument. Likewise, the Court observes that the damage caused by the violation of the right to personal integrity of Messrs. Boyce and Joseph has already been addressed and resolved domestically in their favor, resulting in the commutation of their sentences.

112. Nevertheless, the Court will address the issue of whether the State must await for the completion of proceedings before the Inter-American System before it may carry out a death sentence. The State argues that the aforementioned "legitimate expectation" was not part of Barbados' law until the CCJ's ruling of November 8, 2006. The Court disagrees with the State's reading of the CCJ's decision. Contrary to the State's assertion, the CCJ's decision recognized the binding nature of the decisions of the JCPC on Barbados, "until and unless they are overruled" by the CCJ.¹²⁰ Accordingly, the JCPC's decision in the *Lewis*¹²¹ case, which held that executions in Jamaica could not be carried out where a decision is pending before an international human rights body, was binding as to Barbados at the time the alleged victims were read their death warrants. Nevertheless, the CCJ's decision limited

¹¹⁶ Cf. Judgment delivered by the Barbados Court of Appeal in *Jeffrey Joseph and Lennox Ricardo Boyce v. The Attorney-General et al.*, *supra* note 13, paras. 82 and 84, (folios 976-978).

¹¹⁷ On April 16, 2005, the Caribbean Court of Justice substituted the Judicial Committee of the Privy Council as the highest court for the English-speaking Caribbean countries that have recognized its jurisdiction.

¹¹⁸ Cf. Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, *supra* note 14, para. 133, (folio 3231).

¹¹⁹ Cf. Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, (holding that "the BPC ought not to have decided to advise the Governor-General to proceed with the executions before allowing the respondents a reasonable time to complete the processing of their petitions. In giving this advise without waiting a reasonable time for the Commission's report, the BPC defeated the legitimate expectation of the respondents and deprived itself of any opportunity of considering the Commission's report or if the matter was referred to the Inter-American Court, that Court's judgment. The reading of the death warrants on the 15th September 2004 constituted an infringement of the respondent's right to the protection of the law"), *supra* note 14, para. 128, (folio 3229).

¹²⁰ Cf. Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, *supra* note 14, para. 18, (folio 3180).

¹²¹ Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Neville Lewis v. Attorney General of Jamaica*, *supra* note 113).

the holding of the *Lewis* case. The JCPC had declared in *Lewis* that a “constitutional right” existed to have petitions before international human rights bodies completed before consideration of mercy.¹²² Rather than a constitutional right to complete such international petitions, the majority of the CCJ held in *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce* that there is only a “legitimate expectation” to do so.¹²³ According to the CCJ, the reading of death warrants prior to the conclusion, within a “reasonable time”, of petitions before the Inter-American System, “constituted an infringement of the respondents’ right to the protection of the law”.¹²⁴

113. Regardless of whether a petitioner has a “constitutional right” or a “legitimate expectation”, this Tribunal considers that it is fundamental that litigants be able to complete their appeals at the national level as well as petitions and applications before the Commission and Court, respectively, before any execution may be carried out. This is a natural consequence of Barbados’ ratification of the American Convention and recognition of the jurisdiction of this Court. A different reading of the Convention would be contrary to its object and purpose, and would render the access of the individual to the Inter-American System, as well as Articles 62(3) and 63(1) of such instrument, meaningless.

114. In this case, the State has recognized that it may not carry out executions, and that it has not done so, after this Court issued binding orders regarding provisional measures pursuant to Article 63(2) of the Convention. The Court has repeatedly held, within this context, that it is the responsibility of the State to adopt measures to protect all persons subject to its jurisdiction and this duty is particularly compelling in the case of persons with petitions pending before the supervisory organs of the American Convention.¹²⁵ Nevertheless, the Court observes that the duty not to carry out executions while petitions or cases are pending before the Commission or this Tribunal, respectively, derives not only from an actual order of the Court, but also from the American Convention itself, pursuant to its Article 1(1). Accordingly, any reading of death warrants or execution of a person whose petition is before the Inter-American System may constitute a violation of the State’s duty to guarantee the right to life of that person, in accordance with Articles 1(1) and 4 of the Convention, as well as the right not to be subjected to cruel treatment, in accordance with Articles 1(1) and 5 of the Convention.

C.2) Reading of warrants of execution to Messrs. Huggins and Atkins

115. On April 5 and April 17, 2002, Messrs. Huggins and Atkins respectively informed the Director of Public Prosecutions in Barbados of their intention to appeal to the JCPC in London against the March 27, 2002 dismissal of their appeals by the Court of Appeals.¹²⁶ Furthermore, on April 16, 2002, both men notified the Governor General of Barbados of their intention to appeal to the JCPC and of the fact that they had instructed a firm of

¹²² Cf. Judgment delivered by the Judicial Committee of the Privy Council in *Neville Lewis v. Attorney General of Jamaica*, *supra* note 113.

¹²³ Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, *supra* note 14, para. 143, (folio 3180).

¹²⁴ Cf. Judgment delivered by the Caribbean Court of Justice in *The Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, *supra* note 14, para. 128, (folio 3229).

¹²⁵ Cf. *Case of Velásquez Rodríguez et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering third; *Matter of Nieto-Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering fourth, and *Matter of Ramírez Hinostroza et al.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of May 17, 2007, Considering fourth.

¹²⁶ Cf. Affidavits of Frederick Atkins and Michael Huggins on the effects of the reading of death warrants, *supra* note 92, (folios 1553-1554 and 1562-1563).

solicitors to act on their behalf in prosecution of that appeal.¹²⁷ Nevertheless, on June 26, 2002 warrants of execution were read to Messrs. Atkins and Huggins after they had expressed an intention to appeal to the JCPC.¹²⁸ Furthermore, a second warrant of execution was read to Mr. Atkins on February 9, 2005,¹²⁹ and to Mr. Huggins on May 18, 2005,¹³⁰ while their petition was pending before the Inter-American Commission.¹³¹

116. Unlike the case of Messrs. Boyce and Joseph (*supra*, paras. 107-114), the Court does not have before it - with regards to Messrs. Atkins and Huggins - any evidence of a judgment from a domestic court in Barbados in which these issues were fully adjudicated and redressed. Thus, the Court must address this issue and accordingly reiterates, for the same reasons stated above (*supra*, paras. 113 and 114), that it is fundamental that litigants be able to complete their appeals at the national level as well as petitions and applications before the Commission and Court, respectively, before any warrants of execution may be read or any execution may be carried out. Therefore, the Court finds that the reading of death warrants to Messrs. Atkins and Huggins while their domestic appeals and petition before the Inter-American System were pending, constituted a cruel treatment in violation of Article 5 of the Convention, in conjunction with Article 1(1) thereof.

XI

REPARATIONS

(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)¹³²

A) *Obligation to Redress*

117. It is a principle of International Law that any violation of an international obligation that has caused damage gives rise to a duty to adequately redress said violation.¹³³ The obligation to redress is regulated by International Law in every aspect.¹³⁴ Regarding this matter, the Court has based its decisions on Article 63(1) of the American Convention.

118. In accordance with the criteria established and reiterated in the Court's jurisprudence

¹²⁷ Cf. Affidavits of Frederick Atkins and Michael Huggins on the effects of the reading of death warrants, *supra* note 92, (folios 1553-1554 and 1562-1563).

¹²⁸ Cf. Affidavits Frederick Atkins and Michael Huggins on the effects of the reading of death warrants, *supra* note 92, (folios 1553-1554 and 1562-1563).

¹²⁹ Cf. Final written submissions of the State (merits case file, volume III, folio 886).

¹³⁰ Cf. Affidavit of Michael Huggins on the reading of the second death warrant, May 18, 2005 (case file of affidavits and observations thereto, appendix 4, folio 6648).

¹³¹ Cf. Submission of the petition before the Inter-American Commission on Human Rights on September 3, 2004 (case file before the Commission, Appendix E.2 to the Application, volume I, folios 1625-1627).

¹³² Article 63(1) establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

¹³³ Cf. *Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 25, para. 156, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 131.

¹³⁴ Cf. *Case of Aloeboetoe et al. V. Suriname. Reparations and Costs*. Judgment of September 10, 1993. Series C No. 15, para. 44; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 25, para. 165, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 131.

regarding the nature and scope of the obligation to redress,¹³⁵ as well as the aforementioned considerations on the merits and violations of the Convention determined in the previous chapters, the Court will proceed to analyze the parties' arguments concerning reparations, so as to order the relevant measures to redress the damages.

B) Injured Party

119. The Court will now proceed to determine who should be considered as the "injured party" under Article 63(1) of the American Convention, and consequently as beneficiaries of the reparations set by the Court.

120. The Court considers Messrs. Lennox Boyce, Jeffrey Joseph, Frederick Atkins, and Michael Huggins as the injured parties in the present case who, in their nature as victims of the violations established in the present Judgment (*supra*, paras. 62, 63, 74, 80, 94, 102, 109, 111, and 116), are the beneficiaries of the reparations set out by the Court.

C) Measures of Redress

121. The Court will first proceed to summarize the parties' arguments with regards to reparations, and will then determine which measures must be ordered to redress the damage caused by the violations established in the present Judgment.

122. In this regard, the Commission noted in its final written arguments that the representatives are not seeking monetary compensations in this case. Accordingly, the Commission stated that the appropriate measures of redress in the present case must include the following structural measures that guarantee the non-repetition of the violations addressed in this case: 1) adoption of 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; 2) adoption of measures necessary to ensure that the Constitution and laws of Barbados are brought into compliance with the American Convention by ensuring that acts in violation of national law or the American Convention are not immune from judicial scrutiny and protection, and 3) adoption and implementation of measures necessary to ensure that the conditions of detention in which the victims are held comply with the standards of humane treatment mandated by Article 5 of the Convention. Finally, the Commission supported an award of such costs and expenses as were reasonable and necessary in the presentation of this case both at the national level and before the inter-American system.

123. The representatives requested that the Court declare that the State is responsible for violations of the rights of the victims in the present case, and "in order to emphasize that this action [was] brought not to enrich the alleged victims, but rather to preserve their life and to secure their humane treatment, [the representatives] do not seek financial

¹³⁵ Cf. *Case of Velásquez Rodríguez*, *supra* note 133, paras. 25-26; *Case of Garrido and Baigorria V. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 43, and *Case of The "White Van" (Paniagua Morales et al.)*, *supra* note 24, paras. 76-79. Cf. also *Case of La Cantuta*, *supra* note 64, paras. 200-203, and *Case of the Miguel Castro Castro Prison*, *supra* note 24, paras. 414-416.

compensation in respect of any violations". Rather, the representatives requested a "direction that the State of Barbados commute the death sentence of [Mr.] Michael Huggins and substitute therefore a sentence of life imprisonment with appropriate opportunity to apply for parole." Additionally, the representatives requested that the Court order the State to adopt such legislative or other measures as may be necessary to: 1) ensure that the death penalty is not imposed in a manner inconsistent with the rights and freedoms guaranteed under the Convention, and in particular, that it is not imposed through mandatory sentencing and that it is not given effect by hanging, 2) ensure that the conditions of detention in which the victims are held comply with the requirements of the American Convention, including the right to humane treatment under Article 5 of the Convention, and 3) remove the immunizing effect of section 26 of the Constitution of Barbados in respect of "existing laws". In relation to costs, the representatives emphasized that they do not seek any legal fees in relation to this case, but rather seek the recovery of expenses incurred in respect of the hearing before this Court, including travel and *per diem* allowance, accommodation for the legal representatives and the expert witnesses attending the hearing, and an additional amount representing the costs involving couriers, affidavit fees, photocopying and travel expenses incurred in visiting prisons.

124. The State submitted that there was no need "for any reparations, including legislative and other measures, compensation, costs and expenses", as the State had not incurred in any violation of the American Convention. In the alternative, the State submitted that if the Court were to find the State responsible for violations of the Convention, then "the only suitable form of reparation that could be provided is the commutation of the death sentence of the Petitioners." Additionally, the State mentioned that if the Court decided "to order the State to undertake legislative or other measures, then [...] any such measures in and of themselves would fully satisfy the obligations of the State to correct any existing violations as well as to guarantee that the particular human rights obligations will be respected in the future." Furthermore, the State emphasized that the representatives had expressly denied a request for compensation, had thus waived their legal fees, and that, at most, a nominal award of costs should be made.

125. The Court acknowledges that the representatives have not requested monetary compensation in the present case. Accordingly, the Court considers that the appropriate measures to redress the violations declared in the present Judgment must be those that provide satisfaction for the injured party and that guarantee the non-repetition of such violations.

C.1) *Measures of Satisfaction*

126. First and foremost, the Court considers that the present Judgment *per se* is a form of reparation¹³⁶ that should be understood as a form of satisfaction that recognizes that the rights of Messrs. Boyce, Joseph, Huggins, and Atkins addressed in the present Judgment have been violated by the State.

¹³⁶ Cf. *Case of Suárez Rosero V. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, para. 72; *Case of Cantoral Huamaní and García Santa Cruz*, *supra* note 25, para. 180, and *Case of Zambrano Vélez et al.*, *supra* note 25, para. 142.

C.2) *Guarantees of Non-Repetition*

127. In order to guarantee the non-repetition of the violations of the rights addressed in the present Judgment, the State must do the following:

- a) formally commute the death sentence of Mr. Huggins;
- b) adopt 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;
- c) adopt 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 on its "existing laws", and
- d) adopt and implement such measures necessary to ensure that the conditions of detention in which the victims in this case are held comply with requirements of the American Convention.

128. The State must commute Mr. Huggins' sentence within six months from the date of notification of the present Judgment, and it must comply with the remaining obligations mentioned in the preceding paragraph within a reasonable time from such notification.

129. The Court had ordered the State to adopt provisional measures on behalf of all four victims for the purpose of preserving their "lives and physical integrity [...] so as not to hinder the processing of their cases before the Inter-American system" (*supra*, paras. 31-33). Since their cases have now reached this Tribunal, which has already analyzed violations of the American Convention by Barbados to their detriment in accordance with its contentious jurisdiction, the Court considers that the purpose of the provisional measures has been met. In light of the above, and further considering that Mr. Atkins passed away in 2005, that Messrs. Boyce and Joseph's death sentences have been commuted to life in prison, and that the Court has ordered the State to formally commute the death sentence of Mr. Huggins, this Court hereby lifts the provisional measures ordered on behalf of all of the victims. Accordingly, the Tribunal considers that the State's obligations within the framework of these procedural measures are superseded by those that are ordered in the present Judgment as of the date of its notification.¹³⁷

¹³⁷ Cf. *Case of Herrera Ulloa V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 196, and *Case of Raxcacó Reyes, supra* note 37, operative paragraph 15.

D) Costs and Expenses

130. As previously noted by the Court, costs and expenses constitute part of the concept of reparation under Article 63(1) of the American Convention.¹³⁸

131. The representatives seek an award of costs and expenses incurred in association with the hearing before this Court, and an additional amount representing the costs involving couriers, affidavit fees, photocopying and travel expenses incurred in visiting prisons where the alleged victims have been held. They are not, however, seeking reimbursement of attorney's fees in this case, which they have waived. Consistent with past practices,¹³⁹ the Court supports an award of such costs and expenses as are reasonable and necessary in the presentation of the case before the Court.

132. In this respect, the representatives have submitted receipts that purportedly support said request for a total amount of US\$ 43,062.42. The State and the Commission submitted their respective observations (*supra* para. 11). The State requested that the Court take into account the "limited financial resources and socio-economic situation of Barbados", and observed that "reasonable expenses in this context would only cover the participation of one Senior Counsel (Queen's Counsel) and one Junior Counsel, as well as the two witnesses, as is the practice in the Commonwealth Caribbean when funding high level litigation." The Commission had no observations on this matter.

133. This Court has analyzed the documentation submitted by the representatives and has found sufficient evidence to support a claim of US\$ 42,329.84. Nevertheless, the Court deems that to order the State to cover the costs incurred by six legal representatives is not reasonable and necessary in the presentation of the present case. Therefore, the Tribunal considers reasonable to order the State to reimburse the amount of US\$ 27,000.00 (twenty seven thousand United States dollars) for the costs and expenses related to the domestic and international proceedings in the present case. Considering that the victims are currently in prison in Barbados and their representatives work in England, the State shall pay such amount directly to the representatives, within six months from the notification of the present Judgment.

E) Terms of Compliance of Payment for Costs and Expenses

134. The amounts set forth in the present Judgment as reimbursement of costs and expenses may not be affected, reduced or conditioned by tax laws currently in force or to take effect in the future.

135. The State may fulfill its pecuniary obligations by tendering United States Dollars or an equivalent amount in the currency of the State, which will be calculated according to the

¹³⁸ Cf. *Case of Garrido and Baigorria*, *supra* note 135, para. 79, and *Case of The "White Van" (Paniagua Morales et al.)*, *supra* note 24, para. 212. Cf. also *Case of La Cantuta*, *supra* note 64, para. 243, and *Case of the Miguel Castro Castro Prison*, *supra* note 24, para. 455.

¹³⁹ Cf. *Case of Garrido and Baigorria*, *supra* note 135, para. 82; *Case of Escué Zapata*, *supra* note 51, para. 188, and *Case of Bueno Alves*, *supra* note 80, para. 219.

current exchange rate at the New York stock exchange, United States of America, on the day before payment is made.

136. If the State falls in arrears, Barbadian banking default interest rates shall be paid on the amount owed.

137. In accordance with its constant practice, the Court retains its authority, inherent to its attributions and derived from the provisions of Article 65 of the American Convention, to monitor full execution of this Judgment. The instant case shall be closed once the State has fully complied with the provisions ordered herein. Within one year from the notification of the instant Judgment, Barbados shall submit a report to the Court on the measures adopted in compliance therewith.

XII

OPERATIVE PARAGRAPHS

138. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. The State violated to the detriment of Messrs. Lennox Ricardo Boyce, Jeffrey Joseph, Frederick Benjamin Atkins, and Michael McDonald Huggins the rights embodied in Article 4(1) and 4(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, in the terms of paragraphs 49 to 63 of this Judgment.

2. The State failed to comply with Article 2 of the American Convention on Human Rights, in relation to Articles 1(1), 4(1), 4(2) and 25(1) thereof, in the terms of paragraphs 65 to 80 of this Judgment.

3. The State violated to the detriment of Lennox Ricardo Boyce, Jeffrey Joseph, Frederick Benjamin Atkins, and Michael McDonald Huggins the rights embodied in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, in the terms of paragraphs 86 to 102 of this Judgment.

4. The State violated to the detriment of Lennox Ricardo Boyce, Jeffrey Joseph, Frederick Benjamin Atkins, and Michael McDonald Huggins the rights embodied in Article

5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, in the terms of paragraphs 103 to 116 of this Judgment.

AND DECIDES:

Unanimously that:

5. This Judgment constitutes, *per se*, a form of reparation, in the terms of paragraph 126 hereof.

6. The State shall formally commute the death sentence of Michael McDonald Huggins within six months from the date of notification of the present Judgment, in the terms of paragraphs 127(a) and 128 of this Judgment.

7. The State shall adopt, within a reasonable time from the date of notification of the present 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, in the terms of paragraphs 127(b) and 128 hereof.

8. The State shall adopt, within a reasonable time from the date of notification of the present 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", in the terms of paragraphs 127(c) and 128 hereof.

9. The State shall adopt and implement, within a reasonable time from the date of notification of the present 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, in the terms of paragraphs 127(d) and 128 hereof.

10. The State's obligations in the context of the provisional measures ordered by the Court in the instant case are replaced by those ordered in this Judgment, as of the date on which it is notified, in the terms of paragraph 129 hereof.

11. The State shall make the payment for reimbursement of costs and expenses within six months of notification of this Judgment, in the terms of paragraphs 133 to 136 hereof.

12. It shall monitor full compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention, and shall close this case when the State has complied fully with its terms. Within one year of notification of the Judgment, Barbados shall provide the Court with a report on the measures adopted to comply with it.

Drafted in English and Spanish, the English text being authentic, in San Jose, Costa Rica, on November 20, 2007.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Registrar

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Registrar

