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First Vice-President: Marta Altolaguirre;
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Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare Roberts,
Susana Villaran.
Dated: 20 February 2003
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Represented by: APPLICANT: “Jamaicans for Justice”
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I. SUMMARY

1. On March 19, 2002, the Inter-American Commission on Human Rights (the “Commission”) received a petition dated March 16, 2002 from Jamaicans for Justice, a nongovernmental organization in Kingston, Jamaica (the “Petitioners”) against the Government of Jamaica (the “State” or “Jamaica”). The petition was presented on behalf of Mr. Michael Gayle, who is alleged to have died in Jamaica on September 23, 1999.

2. In their petition, the Petitioners claim that the State is responsible for violating Mr. Gayle’s rights under Articles 4, 5, 8 and 25 of the American Convention on Human Rights (the “Convention”), in conjunction with Article 1(1) of the Convention, because Mr. Gayle’s death resulted from an assault perpetrated on him by Jamaican security forces on September 21, 1999, and because the State has failed to undertake a prompt and effective investigation into the circumstances of his death. The State contends that the petition is inadmissible because remedies provided for under domestic law have not been exhausted in accordance with generally recognized principles of international law.

3. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the claims in the present petition relating to Articles 1, 4, 5, 8 and 25 of the Convention and to continue with the analysis of the merits of the case.

II. PROCEEDINGS BEFORE THE COMMISSION

4. Following receipt of the Petitioners' petition, which was designated as Petition 191/02, the Commission decided to transmit the pertinent parts of the petition to the Government of Jamaica by means of a note dated June 18, 2002 with a request for observations within two months as established by the Commission's Rules of Procedure. Also by note dated June 18, 2002, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State.

5. By note dated August 15, 2002 and received by the Commission on August 20, 2002, the State responded to the Commission's request for information concerning the Petitioners' petition. The Commission transmitted the pertinent parts of the State's observations to the Petitioners by note dated August 26, 2002 with observations requested within 30 days.

6. In a letter dated September 23, 2002 and received by the Commission on September 24, 2002, the Petitioners replied to the State's August 26, 2002 observations. By note dated September 30, 2002, the Commission transmitted the pertinent portions of the Petitioners' reply to the State, with a response requested within 30 days.

7. By communication dated October 29, 2002 and received by the Commission on October 30, 2002, the State requested an extension of time of 15 days within which to respond to the Petitioners' September 23, 2002 observations, which the Commission granted by note dated October 31, 2002. In a subsequent communication dated November 8, 2002 and received by the Commission on the same date, the State provided its observations on the Petitioners' September 23, 2002 response. The Commission transmitted the State's observations to the Petitioners with a request for additional information within 30 days.

8. In a letter dated December 3, 2002, the Petitioner requested an extension of time of 14 days within which deliver their response to the State's observations, which the Commission granted by note dated December 9, 2002. Subsequently, by letter dated December 18, 2002 and received by the Commission on December 26, 2002, the Petitioners delivered a response to the State's November 8, 2002 observations. The Commission transmitted the pertinent parts of the Petitioner's response to the State by note dated January 3, 2003 with a response requested within 30 days. In a communication dated February 3, 2003, Jamaica delivered a response to the Petitioners' observations of December 18, 2002.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

9. The petition states that on Saturday, September 21, 1999 a curfew was imposed in the areas of Olympic Gardens, Seaward Drive and Sterling Avenue in Kingston, Jamaica. At approximately 7:30 p.m. Michael Gayle left his home in Olympic Gardens on his bicycle intending to give a message to his friend down the road. As Mr. Gayle approached a curfew barricade, members of the Jamaican Constabulary Force and the Jamaican Defence Force informed him of the curfew. An altercation ensued in the course of which members of the security forces beat Mr. Gayle. Mr. Gayle was then taken to the Olympic Gardens Police Station, and subsequently to the Kingston Public Hospital after he began to vomit blood and food. Mr.

Gayle was released the following morning after having been charged with assaulting a police officer and resisting arrest but his illness continued. He was taken to the hospital again the following Monday morning, September 23, 1999, where his condition worsened and he was rushed to the emergency room where he was pronounced dead. The autopsy reported that he died from Peritonitis secondary to traumatic rupture of the stomach due to the beating that had taken place on September 21, 1999.

10. In relation to the admissibility of their complaint, the Petitioners claim that they are excused from exhausting domestic remedies because the State does not afford due process of law for the protection of the rights that are alleged to have been violated as provided for under Article 46(2)(b) of the Convention.

11. In particular, the Petitioners claim that in Michael Gayle's case, a Coroner's Inquest was held in December of 1999. A Coroner's Inquest is defined generally as an inquisition or examination into the causes and circumstances of any death happening by violence or under suspicious conditions, held by a coroner, medical examiner or comparable officer with the assistance of a jury.[FN1] According to the Petitioners, the jury in the Coroner's Inquest concerning the death of Michael Gayle found that joint security forces excessively beat Michael Gayle on September 21, 1999 and that all members of the security forces manning the barricade that night should be charged with manslaughter. The petition also indicates that the Director of Public Prosecutions ("DPP") ruled on March 13, 2000 that there was not sufficient evidence to charge any one in the matter. The file was sent back to the Bureau of Social Investigations ("BSI") for further investigation and on August 17, 2000 the BSI reported to the DPP that no new information had been discovered and recommended that the file be closed. According to the petition, the file remains with the DPP awaiting closure or other activity.

[FN1] See Black's Law Dictionary (6th ed., 1990); Ballentine's Law Dictionary (3d ed., 1969). See also State's observations dated February 3, 2003.

12. Further, the Petitioners allege that under Section 94(c) of the Jamaican Constitution the Director of Public Prosecutions has the authority to "discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority." As a consequence, the DPP has the authority not to move forward with criminal proceedings against any members of the Jamaican Constabulary Force and the Jamaican Defence Force despite the ruling of the Coroner's Jury in Mr. Gayle's case. In these circumstances, the Petitioners argue that their petition should be considered admissible under Article 46 of the Convention because they have been prevented from exhausting remedies under domestic law in relation to the criminal proceedings since the DPP has refused to proceed with prosecutions against any of the security force personnel who are alleged to have been implicated in Michael Gayle's death. Further in this connection, the Petitioners state that the DPP is one of the most constitutionally protected and powerful officers in Jamaica and that absent a decision by the DPP to proceed with a criminal prosecution, a victim's family is left with very few options, none of which should be considered available or effective.

13. More particularly, the Petitioners acknowledge that there is a possibility under Jamaican law for the institution of “private prosecutions.” They note, however, that as the Director of Public Prosecutions has the power under the Constitution to take over, continue or discontinue any criminal proceeding, that a private prosecution cannot be instituted or continued without the consent or authorization of the Director of Public Prosecutions, and that in the Michael Gayle case the DPP is unlikely to allow a private prosecution given its inconsistency with the ruling that he has already made that there is insufficient evidence to pursue the matter.

14. Similarly, the Petitioners recognize that Sections 1(9) and 94(6) of the Constitution of Jamaica provide courts with some limited jurisdiction to review decisions taken by the DPP, but argue that such proceedings face significant substantive and procedural impediments. They claim, for example, that the power of the courts to provide judicial review of the DPP has been tested successfully only once in over forty years since Jamaica was granted independence, in the case of Melanie Tapper.[FN2] The Petitioners also allege that an application for leave from the Supreme Court is required in order to proceed with such an application, which is burdensome and out of reach financially for most people, and that there is a time deadline for seeking leave, namely within 90 days of the date of the ruling in question. In this regard, the Petitioners note that the DPP rendered his decision not to proceed with a prosecution in the case of Michael Gayle on March 13, 2000 and that leave to seek judicial review in respect of that decision was not pursued partly because the DPP indicated that he was sending the file for further investigation, which the Petitioners note did not result in any further action. The Petitioners acknowledge that in a recent case, Patrick Genius v. Director of Public Prosecutions and the Attorney General,[FN3] the Supreme Court granted leave on October 22, 2002 for the petitioners to review the decision of the DPP in that case. They point out, however, that the State vigorously opposed the application for leave as being untimely filed, and that in any event that the court stipulated that a decision to quash on judicial review a ruling by the Director of Public Prosecutions is not an order requiring prosecution but rather an order requesting reconsideration of the decision not to prosecute.[FN4]

[FN2] Melanie Tapper, Suit Nos. M103, M113 of 1998, Judgment declared February 8, 1999 (unreported).

[FN3] Genius v. Director of Public Prosecutions and the Attorney General, Suit N^o M35 of 2002, Judgment delivered October 31, 2002.

[FN4] Petitioners’ December 18, 2002 observations, p. 5, citing *id.*

15. With regard to the possibility of a Constitutional Motion, the Petitioners confirm that Section 25 of the Constitution of Jamaica authorizes applications to the Supreme Court concerning allegations that any of the provision of Sections 14 to 24 of the Constitution have been, are being or are likely to be contravened in relation to the person applying for such redress. They contend, however, that according to Section 25, the Supreme Court shall not exercise its powers under the section “if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person under any other law.” On this basis, the Petitioners argue that since Michael Gayle’s family is pursuing a civil action before the courts, this would take precedence over a Constitutional Motion and would therefore preclude them

from pursuing such a Motion. They similarly claim that if Mr. Gayle's family were to obtain a successful monetary compensation in a civil suit, they would be precluded from pursuing a Constitutional Motion because they would be considered to have been compensated for Mr. Gayle's death. In response to the State's observations concerning the recent decision of the Jamaica Court of Appeal in the Agana Barrett Case,[FN5] in which that Court recognized the availability of damages for breaches of constitutional rights as distinct from other grounds of liability in a civil suit, the Petitioners argue that even where a claim for breach of constitutional rights is available, it would only provide an award of monetary compensation, which according to the Petitioners is not a sufficient remedy for breaches of Mr. Gayle's rights to life, humane treatment, fair trial and judicial protection.

[FN5] State's November 8, 2002 observations, p. 8, citing Agana Barrett, Doris Fuller (Administratrix Estate Agana Barrett Deceased) v. A.G. Court of Appeal N° 91/95.

16. In particular, the Petitioners argue that an effective remedy in the present case must include the investigation, prosecution and punishment of those responsible for the violations of Mr. Gayle's rights. The Petitioners cite in his regard jurisprudence of the Inter-American Court and Commission indicating that the international obligation of states to compensate victims of human rights violations committed by their agents must be accompanied by efforts to prevent, investigate and punish any such violations in order to properly remedy the damages caused.[FN6] Accordingly, the Petitioners maintain that a motion for constitutional redress can only result in an award of monetary compensation and therefore is not a sufficient remedy in Michael Gayle's case.

[FN6] Petitioners' September 23, 2002 Observations, p. 6, citing La Granja, Ituango v. Colombia, Case 12.050, Report N° 57/00, Annual Report of the IACHR 2000; Petitioners' December 18, 2002 Observations, p. 6-9, citing, inter alia, I/A Court H.R., Baena Ricardo et al. Case, Judgment of February 2, 2001, Ser. C N° 72; Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990; Ser. C N° 7; Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, Case 11.581, Report N° 83/01, Annual Report of the IACHR 2001.

17. The Petitioners provide similar arguments with respect to the pursuit of a civil claim in respect of Mr. Gayle's death. They assert in particular that although Mr. Gayle's family is pursuing a civil claim, at best they could be awarded monetary compensation for his death, which they argue cannot be considered an adequate or effective remedy for the violations of his rights under Articles 4, 5, 8 and 25 of the American Convention.

18. Also in relation to the admissibility of their complaint, the Petitioners assert that no petitions or communications substantially the same as the present have been studied by the Commission or by an other international organization in accordance with Article 47(d) of the Convention.

19. With respect to the substance of their complaints, the Petitioners claim that the State is responsible for violating Mr. Gayle's rights under the American Convention in three respects. First, the Petitioners argue that Jamaica is responsible for violating Mr. Gayle's right to life under Article 4 of the Convention because the State's security forces assaulted Mr. Gayle on September 21, 1999 in a manner that resulted in his death on September 23, 1999. According to the Petitioners, these allegations are substantiated by the evidence presented during the course of the December 1999 Coroner's Inquest including the testimony of security force officials who witnessed the incident.[FN7] The Petitioners assert that by failing to prosecute security forces who were present at the barricade on the night of Mr. Gayle's assault, Jamaica has failed to take measures that would prevent agents of the state from violating the fundamental right to life.

[FN7] See, e.g., Petition dated March 16, 2002, pp. 5-6 and Appendix 8, citing testimony from Proceedings, "Coroner's Court for the Corporate Area Holden at Sutton Street on the 6th Day of December 1999 before Her Honour Mrs. P.E. Gibso-Stellar Coroner of the Said Parish", December 1999.

20. Second, the Petitioners allege that Jamaica is responsible for violating Mr. Gayle's right to humane treatment under Article 5 of the Convention when security forces assaulted him on September 21, 1999. The Petitioners provide in this regard descriptions of the manner in which the assault was alleged to have been carried out and the injuries suffered by Mr. Gayle, also based to a significant extent upon evidence presented during the December 1999 Coroner's Inquest.[FN8]

[FN8] See, e.g., Petition dated March 16, 2002, pp. 6-7 and Appendix 8, citing Proceedings, "Coroner's Court for the Corporate Area Holden at Sutton Street on the 6th Day of December 1999 before Her Honour Mrs. P.E. Gibso-Stellar Coroner of the Said Parish", December 1999.

21. Third, the Petitioners argue that the State is responsible for violating Articles 8 and 25 of the Convention governing the right to a fair trial and the right to judicial protection because the investigation into the Michael Gayle matter was conducted in an inefficient and dilatory manner. The Petitioners claim, for example, that there were delays and omissions in the taking of statements from witnesses to the event. The Petitioners also state that notwithstanding the poor investigation, significant evidence implicating security force officials was presented during the Coroner's Inquest, but the DPP nevertheless refused to prosecute any criminal charges in relation to the incident. The Petitioners suggest that these omissions facilitate and perpetuate a pattern of impunity for similar instances of police abuses in Jamaica and have resulted in non-compliance with Articles 8 and 25 of the Convention, in conjunction with Article 1(1) thereof.

B. Position of the State

22. With respect to the admissibility of the Petitioners' petition, the State claims that the petition of Michael Gayle is inadmissible as remedies provided for under domestic law have not been exhausted in accordance with generally recognized principles of international law. In particular, the State argues that Section 25 of the Jamaican Constitution provides that a person who alleges that any of his fundamental rights have been, are being, or are likely to be contravened may, without prejudice to any other action in respect of the same matter which is lawfully available, apply to the Supreme Court for redress. The State also notes the Petitioners' submission that a Constitutional Motion has not been filed because the family is pursuing a civil matter before the courts, and therefore suggests that the State has not precluded the Petitioners from pursuing a Constitutional Motion as a remedy.

23. The State also disputes the Petitioners' contention that they have been precluded from exhausting remedies under domestic law in relation to criminal proceedings, because the DPP has acted within his powers outlined in Section 94 of the Constitution of Jamaica in deciding not to institute criminal proceedings against any of the security force personnel. Section 94 of the Constitution read in part as follows:

94.(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do –

- (a) to institute and undertake criminal proceedings against any person before any court other than a court-martial in respect of any offense against the law of Jamaica;
- (b) to takeover and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

[. . .]

(6) In the exercise of the powers conferred upon him by this section, the Director of Public prosecutions shall not be subject to the direction or control of any other person or authority.

24. The State asserts that there is evidence that national authorities have actively investigated the matters but that the Director of Public Prosecutions did not institute criminal proceedings because he was not satisfied with the evidence presented. These inquiries have included an investigation by the Internal Affairs Division of the Office of Professional Responsibility, which was sent to the DPP who then decided to convene a Coroner's Inquest. The Inquest was held and rulings made. Subsequently, the DPP determined that there was not sufficient evidence to charge any one in the matter and the file was referred to the Bureau of Special Investigations for further investigations, which uncovered no new information and recommended that the file be closed. The State relies in this regard on the Commission's jurisprudence according to which the mere fact that a domestic remedy does not produce a result favorable to the Petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies.[FN9]

[FN9] State's Observations of August 15, 2002, p. 5, citing *Cardozo Andrade v. Venezuela*, Report N° 20/00, para. 40.

25. The State also alleges the existence of constitutional and civil remedies, which it claims are available to the persons with the "requisite locus standi" in this case, namely Mr. Gayle's family, pursuant to the Constitutional and domestic law. Moreover, as the Petitioners admit that Mr. Gayle's family is presently pursuing civil remedies, the Petitioners' contention that the relevant parties have been prevented from exhausting domestic remedies due to the Director of Public Prosecution's decision not to criminally prosecute members of the security forces is without merit.

26. With regard to the specific mechanisms mentioned by the Petitioners in their observations, the State asserts that they constitute available remedies and that the Petitioners have failed to pursue them. In particular, the State claims that the remedy of private prosecutions exists as an established procedure that has its genesis in the common law and is provided for implicitly in Section 94 of the Constitution of Jamaica. The State further contends that the Petitioners have failed to offer any evidence to support their argument that it is highly likely that the Director of Public Prosecutions would intervene in order to prevent a private prosecution in this case and therefore that it is implicit in the Petitioners' submissions that this remedy has not been exhausted under domestic law.

27. Similarly, the State argues that a motion for judicial review constitutes an available remedy and cites both the *Melanie Tapper Case*[FN10] and the *Patrick Genius Case*[FN11] as examples of proceedings that underscore the existence and effectiveness of the remedy. The State notes that on October 31, 2002 the Supreme Court of Jamaica granted the applicants in the *Patrick Genius Case* leave to apply for judicial review in respect of a decision of the DPP, and further states that a motion for judicial review may be brought even when the time for the application is past because the court may extend the time for application in certain instances. Accordingly the State argues that the estate of the alleged victim has not exhausted, and has not even attempted to pursue, this as an available and effective remedy.

[FN10] *Melanie Tapper Case*, supra.

[FN11] *Patrick Genius Case*, supra.

28. With respect to the constitutional remedies, the State asserts that the Petitioners' contention that an award of monetary compensation in a civil suit would likely preclude the family of Michael Gayle from obtaining constitutional relief is unsupported and cites the decision of the Court of Appeal of Jamaica in the *Agana Barrett Case*. [FN12] According to the State, the Court in that case awarded separate damages for a breach of constitutional rights as distinct from other grounds of liability. On this basis, the State asserts that constitutional redress remains an adequate and effective remedy for Mr. Gayle's family.

[FN12] State's November 8, 2002 observations, p. 8, citing *Agana Barrett, Doris Fuller (Administratrix Estate Agana Barrett Deceased) v. A.G. Court of Appeal N° 91/95*.

29. In addition, the State argues that in any event an award of monetary compensation from a civil suit would be an effective remedy for the family of Michael Gayle within the meaning of inter-American jurisprudence. In this regard, the State distinguished the Commission's decision in the *La Granja, Ituango Case* on the basis that the matter involved disciplinary proceedings that the Commission found did not meet the requirements of judicial protection under the Convention and that the contentious-administrative remedies were not adequate, on their own, to create reparations for human rights violations. In Mr. Gayle's case, however, the State argues that the remedies are not disciplinary or administrative in nature but include constitutional redress, civil remedies, and private prosecutions. In the State's submission, these remedies are capable and sufficient measures for punishing, prosecuting and ordering reparations for any harm done, as determined by the domestic courts. The State therefore argues that these constitute adequate and effective remedies and must be exhausted as required by Article 46(1) of the Convention.

30. In its observations of February 3, 2003, the State relied upon the arguments made in its previous communications. In addition, the State disputed the Petitioners' interpretation of the Commission's decisions in the cases of *Juan Angel Greco v. Argentina* and *Zulema Tarazona Arriate et al. v. Peru*. In particular, the State distinguished the Commission's findings in the *Greco Case* from the situation of Michael Gayle, on the basis that in the former proceeding the State failed to advance any independent measures of investigation to establish responsibility for the victim's beating and death while in custody. In the present case, however, the State asserts that it has established that the events surrounding Michael Gayle's death have been exhaustively investigated by the Internal Affairs Division of the Office of Professional Responsibility and through a Coroner's Inquest, with the result that the DPP determined that the evidence was insufficient to charge the specific individuals responsible for Mr. Gayle's death. With respect to the *Arriate Case*, the State contests the Petitioners' suggestion that government-initiated criminal investigations take precedence as an effective remedy over monetary damages. Rather, the State argues that the Commission does not seek to establish primacy of any one of three possible remedial steps, namely investigation and punishment, restoring the right violated, and providing compensation as warranted for damages resulting from the violation. The State asserts in this regard that it is still in the process of complying with the three remedial steps, and that although it has not been able to charge any one with Michael Gayle's death based upon the investigation in the matter, it has begun settlement negotiations in relation to the civil suit filed by the Estate of Michael Gayle. Indeed, the State claims to have informed the lawyers for the Estate that "liability on the part of the Government cannot be contested and the matter should be settled."

31. The State did not provide the Commission with any observations on the merits of the allegations raised in the Petitioners' complaint.

IV. ANALYSIS

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

32. The Commission is competent to examine the petition in question. Under Article 44 of the Convention and Article 23 of the Rules of Procedure of the Commission, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Convention. The alleged victim, Michael Gayle, is a person whose rights were protected under the Convention, the provisions of which the State had undertaken to respect. Jamaica has been subject to the jurisdiction of the Commission, under the terms of the Convention, since August 7, 1978, the date on which it deposited its instrument of ratification.

33. Inasmuch as the Petitioners have filed complaints alleging violation of Articles 4, 5, 8, 25 and 1(1) of the American Convention, the Commission is competent *ratione materiae* to examine the complaint.

34. The Commission is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred on and after September 21, 1999, the date on which Mr. Gayle is alleged to have sustained the injuries that ultimately produced his death. The facts alleged therefore occurred subsequent to the date on which Jamaica's obligations as a State party to the American Convention took effect.

35. Finally, the Commission is competent *ratione loci*, given that the petition indicates that the alleged victim was under the jurisdiction of the State of Jamaica at the time the alleged events occurred, which reportedly took place within the territory of that State.

B. Admissibility of Petition

1. Duplication of Procedures

36. According to the Petitioners, the matters complained of in this petition have not previously been submitted for examination by this Commission or by any other international organization. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under Articles 46(1)(c) or 47(d) of the Convention.

2. Exhaustion of Domestic Remedies

37. Article 46(1)(a) of the Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted may be excused. Article 46(2) of the Convention specifies that this exception applies if the legislation of the State concerned fails to afford due process for the protection of the right allegedly violated, if the party alleging the violation has been hindered in his or her access to domestic remedies, or if there has been an unwarranted delay in the issuance of a final judgment.

38. Further, when the petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the Commission's Rules of Procedure provides that the burden then shifts to the State to

demonstrate that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the record.[FN13]

[FN13] See also I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 59.

39. In determining whether the Petitioners' claims should be considered inadmissible for failure to exhaust domestic remedies, the Commission refers to the fundamental principles governing the nature of the remedies that must be exhausted in the inter-American system, namely those remedies that are both adequate, in that they are suitable to address an infringement of a legal rights, as well as effective, in that they are capable of producing the result for which they are designed.[FN14]

[FN14] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4 (1988), paras. 63-66. See also I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Ser. A N° 11 (1990), paras. 34, 36.

40. In the context of these principles, both the Inter-American Court and the Commission have held that a state's obligation to respect and to ensure respect for the rights under the Convention entails the obligation to prevent, investigate and punish any violations of those rights.[FN15] When a crime is committed that can be prosecuted on the State's own initiative, the State is obliged to promote and advance the criminal proceedings to clarify the events, judge those responsible, and establish the corresponding criminal sanctions.[FN16] As with all remedies, these measures must be substantiated in accordance with the rules of due process of law under Article 8(1) of the Convention, all in keeping with the general obligation of states parties to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction in accordance with Article 1(1) of the Convention.[FN17]

[FN15] See e.g. Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, Case 11.581, Report N° 83/01, Annual Report of the IACHR 2001, paras. 25-28; La Granga, Ituango v. Colombia, Case 12.050, Report N° 57/00, Annual Report of the IACHR 2000, para. 41; I/A Court H.R., Villagrán Morales et al. Case, Reparations, Judgment of May 26, 2001, para. 98 and operative para. 5.

[FN16] See e.g. Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, Case 11.581, Report N° 83/01, Annual Report of the IACHR 2001, paras. 25-28; La Granga, Ituango v. Colombia, Case 12.050, Report N° 57/00, Annual Report of the IACHR 2000, para. 41; I/A Court H.R., Villagrán Morales et al. Case, Reparations, Judgment of May 26, 2001, para. 98 and operative para. 5.

[FN17] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections Judgment of June 26, 1987, Ser. C N° 1 (1987), para. 91.

41. In the present case, the Commission considers that the facts alleged by the Petitioners involve the alleged violation of non-derogable rights, including the right to life and the right to humane treatment, which under domestic law are offenses that can be prosecuted by the State on its own initiative. Therefore it is this process, initiated and pursued by the State, that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages.

42. In this regard, the record before the Commission indicates that the State undertook some procedures for investigating Mr. Gayle's death, including a Coroner's Inquest and an investigation by the State's Bureau of Special Investigations. The Petitioners claim, however, that the investigations were deficient and that the Director of Public Prosecutions ultimately declined to pursue charges against those suspected of responsibility for the death, despite the existence of evidence upon which the Petitioners allege prosecutions could be based.

43. Moreover, based upon the submissions of the parties, the Commission is satisfied that the Director of Public Prosecutions has exclusive authority under Section 94 of the Constitution of Jamaica for making all decisions concerning criminal prosecutions arising in Jamaica, including the authority to take over and continue, or to discontinue at any stage before judgment is delivered, any criminal proceedings instituted by himself or any other person or authority. Accordingly, the State retains exclusive authority for pursuing criminal proceedings in respect of the circumstances relating to Michael Gayle. While the record indicates that there is provision under Jamaican law for "private prosecutions", the Commission considers that proceedings of this nature do not constitute remedies that the Petitioners are required to exhaust. It is clear from the instruments and decisions of the inter-American system, as noted above, that the obligation to investigate, prosecute and punish serious violations of human rights rests with member states, as the entities with the international legal commitment and resources to carry out these functions. To expect the Petitioners to assume these responsibilities would not only be inconsistent with the system's jurisprudence, it would also place an inequitable burden on those who generally lack the means and expertise to fulfill these responsibilities.

44. The Commission similarly considers that an application for judicial review in respect of the DPP's decision not to prosecute criminal charges in relation to Michael Gayle's death does not constitute an effective remedy that the Petitioners should be required to pursue for the purposes of the exhaustion of domestic remedies requirement. It reaches this conclusion in light of the fact that the ability of an individual to pursue application for judicial review requires the granting of leave by the Jamaican Supreme Court which, according to the information available, is a discretion that is exercised by the Court infrequently,[FN18] as well as the fact that, even where successful, the relief available appears to be limited to an order requesting the DPP to reconsider his or her decision not to prosecute.

[FN18] See, e.g., Eur. Comm. H.R., *Byloos v. Belgium*, 66 D.R. 238.

45. Based upon the information presented, the Commission finds for the purposes of the admissibility of the Petitioners' claims that the State has denied the Petitioners access to or has prevented them from exhausting domestic remedies in respect of the claims in their petition. Consequently, the requirement of exhaustion of domestic remedies does not apply to the Petitioners pursuant to Article 46(2) of the Convention.

46. It only remains to note that invoking the exceptions to the prior exhaustion rule provided for in Article 46(2) of the Convention is closely bound up with the determination of possible violations of certain rights set forth therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, has an autonomous content vis-a-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule provided for in sections (a), (b), and (c) of that provision are applicable to the case in question must be undertaken prior to and separate from the analysis on the merits, since it turns on a different standard of appreciation than that used to determine the violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the Report adopted by the IACHR on the merits in order to determine whether there have been violations of the American Convention.

3. Timeliness of the Petition

47. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely within six months from the date on which the complaining party was notified of the final judgment at the domestic level.

48. As in the case of exhaustion of domestic remedies, however, Article 46(2) of the Convention provides that the six-month period under Article 46(1)(b) of the Convention shall not apply under certain conditions. This includes circumstances where the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

49. Given the Commission's finding that Article 46(1)(b) is applicable in the circumstances of the present case, the six-month period does not apply to the Petitioners' petition. The State has not contested the issue of the six month period, and the Commission is satisfied in the circumstances of the matter that the petition was filed within a reasonable time. The Commission therefore finds no bar to the admissibility of the petition under Article 46(1)(b) of the Convention and Article 32 of the Commission's Rules of Procedure.

4. Colorable Claim

50. Articles 47(b) and 47(c) of the Convention require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

51. The Petitioners allege that the State is responsible for violation of Article 4, 5, 8 and 25 of the American Convention, in conjunction with violations of Article 1(1) of the Convention, in relation to the death of Michael Gayle on September 23, 1999. They have provided in support information, as summarized in Part III.A of this Report, particularizing the factual and legal grounds upon which they alleged the State of Jamaica to be responsible for these violations of the American Convention. The State has not provided any observations or other information concerning the Petitioners' allegations on the merits of their petition.

52. Based upon the information provided by the parties, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by the Convention, and that the statements of the Petitioner are not, on the information provided, manifestly groundless or obviously out of order. Consequently, the petition is not barred as inadmissible under Articles 47(b) or 47(c) of the Convention.

V. CONCLUSIONS

53. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention.

54. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible, with respect to Articles 1, 4, 5, 8 and 25 of the Convention.
2. To transmit this Report to the Parties.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C. on the twentieth day of the month of February, 2003. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare Roberts and Susana Villarán, Commissioners.