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Title/Style of Cause:	Michael Gayle v. Jamaica
Doc. Type:	Report
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett Daher, Freddy Gutierrez Trejo, Florentin Melendez.
Dated:	24 October 2005
Citation:	Gayle v. Jamaica, Case 12.418, Inter-Am. C.H.R., Report No. 92/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: "Jamaicans for Justice"
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## I. SUMMARY

1. On March 29, 2002, the Inter-American Commission on Human Rights (the “Commission”) received a petition dated March 16, 2002 from Jamaicans for Justice, a non-governmental organization based 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 died in Jamaica on August 23, 1999.

2. In their petition, the Petitioners have alleged 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 August 21, 1999, and because the State has failed to undertake a prompt, effective and impartial investigation into the circumstances of his death.

3. The State accepts liability for Mr. Gayle’s death and the violation of his human rights enshrined in Articles 4 and 5 of the Convention, but opposes the petition on the remaining grounds and contends that the investigations carried out by the State were conducted in good faith, and were both transparent and diligent.

4. As set forth in the present Report, after having analyzed the information and arguments provided by the parties on the merits of the case, the Commission concluded that Jamaica is responsible for violations of Articles 4, 5, 7, 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, in respect of the death of Mr. Gayle and the State’s

subsequent investigation of the matter. Based upon these conclusions, the Commission has recommended that the State grant the Petitioners an effective remedy, which includes the payment of compensation to Mr. Gayle's next of kin. The Commission also recommended that the State adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations. Finally, the Commission recommended that the State take such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, which should include training for members of Jamaican security forces in international standards for the use of force and appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces, in accordance with the findings in the present report.

## II. PROCEEDINGS SUBSEQUENT TO REPORT N° 8/03

5. In Report N° 8/03 dated February 20, 2003, the Commission found the Petitioners' complaint to be admissible with respect to Articles 1, 4, 5, 8 and 25 of the Convention and decided to continue with the analysis of the merits of the case. The Commission transmitted the Report to the Petitioners and to the State by notes dated March 12, 2003, and requested any additional observations on the merits of the case to be provided to the Commission within two months. The Commission also placed itself at the disposal of the parties in accordance with Article 48(1)(f) of the Convention, with a view to reaching a friendly settlement of the matter.

6. In a letter dated May 6, 2003, the Petitioners requested a 30-day extension of time within which to submit additional observations on the merits, which was granted by the Commission. Subsequently, by letter dated June 13, 2003 and received by the Commission on June 16, 2003, the Petitioners submitted additional arguments on the merits of the case. In addition, the Petitioners requested an oral hearing on the petition including an evidential hearing with an expert witness. The Commission transmitted the pertinent parts of the Petitioners' additional observations to the State by note dated June 18, 2003, with a request for any additional observations within two months.

7. By note dated July 3, 2003 and received by the Commission on July 9, 2003, Jamaica advised the Commission of the State's interest in pursuing a friendly settlement of the case. The Commission transmitted a copy of the State's note to the Petitioners in a letter dated July 9, 2003, with a request for a response within 30 days indicating whether the Petitioners were also interested in pursuing a friendly settlement.

8. In a letter dated August 22, 2003 and received by the Commission on August 27, 2003, the Petitioners informed the Commission that they were amenable to a discussion with the State but that they did not desire to enter into protracted negotiations and therefore requested that a date for an oral hearing still be set.

9. The Commission informed both parties, by letters dated February 2, 2004, that a hearing would be convened on March 2, 2004. By note dated February 11, 2004 and received by the Commission on February 13, 2004, Jamaica informed the Commission that a meeting was held

between the Petitioners and the State on January 29, 2004 to discuss a friendly settlement. The State reiterated its interest in a friendly settlement and expressed its concern that the Petitioners' intent to pursue a hearing on the merits would not be consistent with successful discussions on a friendly settlement. By note dated February 17, 2004, the Commission transmitted to the Petitioners the pertinent parts of the State's response and requested a reply by February 20, 2004, indicating whether the Petitioners wished to proceed with the hearing on the merits scheduled for March 2, 2004.

10. By note dated February 20, 2004 and received by the Commission on the same date, the Petitioners suggested to the Commission that the hearing serve as an opportunity for the State to put forward a response to the Petitioners' friendly settlement proposal of January 29, 2004 and that, if the State were unable to do this, the hearing would proceed on the merits.

11. In a letter dated February 27, 2004 and received by the Commission on the same day, the State informed the Commission that it had not made arrangements to participate in the March 2, 2004 hearing and reiterated its interest in pursuing friendly settlement discussions.

12. On March 2, 2004, a hearing on the merits took place at the Inter-American Commission on Human Rights, with only the Petitioners in attendance. The Petitioners made written and oral representations to the Commission and responded to questions concerning the merits of the case.

13. The Commission provided the pertinent parts of the State's February 27, 2004 letter to the Petitioners during the hearing, and subsequently transmitted the letter to the Petitioners by note dated March 3, 2004. The Petitioners delivered their observations by note dated March 25, 2004 and received by the Commission on the same date. The pertinent parts of the Petitioners' observations were transmitted to the State by note dated March 30, 2004. By note dated April 26, 2004 and received by the Commission on April 27, 2003, the State enclosed a copy of a letter responding to the Petitioners' proposal for possible elements of a friendly settlement agreement.

14. In a letter dated April 28, 2004 and received by the Commission on April 30, 2004, the Petitioners responded to the State's proposal for a friendly settlement. The Petitioners expressed their concern with various aspects of the proposal and requested that the Commission proceed with a decision on the merits.

15. By note dated April 25, 2004 and received by the Commission on April 29, 2004, the Petitioners delivered to the Commission further submissions on the merits of the case, including depositions from the Coroner's Inquest. The Commission transmitted the pertinent parts of the information to the State by note dated May 5, 2004, with a response requested within one month.

16. In a letter dated May 14, 2004, the State requested an extension of the deadline for submission of a response on the merits. The Commission granted an extension of 30 days. Subsequently, by letter dated June 21, 2004, the State delivered to the Commission Jamaica's submissions on the merits. The Commission transmitted the pertinent parts of the State's response to the Petitioners by note dated June 23, 2004, with a request for observations within one month.

17. By communication dated July 23, 2004 and received by the Commission on the same day, the Petitioners responded to the State's submissions on the merits. The Commission transmitted the relevant parts of the response to the State by note dated July 26, 2004, with observations requested within one month.

18. On August 24, 2004, the State delivered to the Commission additional observations on the merits of the case, which the Commission transmitted to the Petitioners by note dated August 30, 2004.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioners

19. The Petitioners allege that on Saturday, August 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. Mr. Gayle had been diagnosed as a paranoid schizophrenic and the Petitioners claim that he presented himself as someone not of sound mind the night of the curfew. As Mr. Gayle approached a curfew barricade, members of the Jamaican Constabulary Force and the Jamaican Defence Force informed him of the curfew. According to the Petitioners, an altercation ensued, in the course of which several police and soldiers severely beat Mr. Gayle while other members of the security force observed the assault.

20. The Petitioners indicate further that after the incident, Mr. Gayle was taken to the Olympic Gardens Police Station and charged with assaulting a police officer and resisting arrest. He was subsequently taken to the Kingston Public Hospital after he had begun to vomit blood and food. Mr. Gayle was released the next morning but he was taken to the hospital again the following Monday morning, August 23, 1999, when his conditions worsened. He was rushed to the emergency room where he was pronounced dead. The autopsy reported that he had died from Peritonitis secondary to traumatic rupture of the stomach. According to the Petitioners, the pathologist who examined Mr. Gayle's body confirmed that his injuries were consistent with a beating that involved gun butts, punches and kicks with military boots.[FN1]

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[FN1] Petitioners' observations of June 13, 2003, citing Coroner's Court Deposition of Sree Ramulu Kankipati, p. 5.

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21. The Petitioners also state that a Coroner's Inquest into the case was held in December of 1999. The jury in the Coroner's Inquest found that joint security forces had excessively beat Michael Gayle on August 21, 1999 and that all members of the security forces manning the barricade that night should be charged with manslaughter. 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 Special Investigations ("BSI") for further investigation. 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 Petitioners, the file remains with the DPP awaiting closure or other activity.

22. With respect to the substance of their complaints against the State, the Petitioners allege that the State violated Mr. Gayle's rights under Articles 1, 4, 5, 7, 8 and 25 of the American Convention. The Petitioners claim that the State is responsible for the violation of Mr. Gayle's right to life contrary to Article 4(1) of the Convention due to the deliberate and excessive assault of Mr. Gayle by State agents that directly resulted in his death. The Petitioners submit that Mr. Gayle's right to life was violated by the State in its failure to ensure (1) the use of lethal force only where absolutely necessary; (2) proper preparation and planning of potentially lethal operations; (3) an independent and impartial investigation where there has been a potential violation; and (4) due process in the prosecution of the perpetrators. The Petitioners assert that by failing to prosecute security forces who were present at the barricade the night of Mr. Gayle's assault, Jamaica has failed to take steps that would prevent agents of the State from violating the fundamental right to life in the future.

23. More particularly, the Petitioners submit that through deliberate actions the security forces used an excessive amount of force on Michael Gayle on the night of the beating. Furthermore, the Petitioners assert that there are never lawful grounds to collectively beat one individual as security forces did against Mr. Gayle, especially taking into account the State's obligations to protect the lives of its citizens.

24. In addition, the Petitioners allege that Mr. Gayle's right to life was violated because the actions of the security forces fell short of the expected actions of State agents in their position. According to the Petitioners, international obligations to respect the right to life require that law enforcement officers be fully trained in the use of lethal force so as to minimize the risk to lives.

25. The Petitioners also claim that the State's positive obligation to ensure Mr. Gayle's right to life has not been fulfilled by the investigative process that followed his death, as it is implicit in the State's obligation that investigations be thorough, prompt and impartial. The Petitioners submit that where the allegation of a breach of an individual's fundamental rights arises due to the actions of State agents, a higher standard of review is necessary to safeguard those rights. The Petitioners contend that under international law, the investigation process must be independent, and that in the present case the investigation was flawed.

26. In support of their position, the Petitioners assert that the BSI is a branch of the police and therefore not independent. In addition, the Petitioners allege that the BSI suggested in its investigation that those representing Mr. Gayle and his family should obtain evidence relating to the circumstances of his death. The Petitioners submit that it is the State's obligation to ensure that those conducting the investigation have the resources to obtain all necessary information. According to the Petitioners, this demonstrates that the investigation was not being carried out in a serious manner. They also claim that the investigation must be rigorous and thorough, including autopsies that are professionally and independently performed by an independent forensic pathologist, and that the investigation must be capable of producing real outcomes, not "a mere formality preordained to be ineffective." [FN2]

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[FN2] Petitioners' observations dated June 13, 2003, para. 39, citing I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4, para. 181.

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27. With respect to the requirement of due process in the prosecution of alleged perpetrators, the Petitioners cite the Commission's opinion in the Case of La Granja and Ituango v. Colombia for the proposition that "whenever a crime is committed that can be prosecuted on the State's own initiative, the State has the obligation to promote and give impetus to the criminal process to its final consequences." [FN3] The Petitioners argue that to this end, a Coroner's Inquest alone will not be a satisfactory investigation process where there is a real lack of criminal sanctions. The Petitioners also allege that the Coroner's Inquest itself was neither impartial nor transparent for a number of reasons including: (1) the police chose the jurors; (2) there was excessive representation by the State; (3) the Coroner did not compel the presentation of all evidence; (4) the Coroner told the jurors that they did not have to identify individual perpetrators; and (5) the jury returned a verdict of manslaughter without naming any specific person.

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[FN3] Petitioners' observations dated June 13, 2003, para. 65, citing Case 12.050, Report N° 57/00, La Granja and Ituango v. Colombia, Annual Report of the IACHR 2000, para. 40.

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28. Further, the Petitioners submit that there will be violation of the right to life where the DPP fails to give reasons for his decision not to prosecute, or provides only cursory reasons, as this undermines the independence of, and the public's confidence in, the legal process. The Petitioners allege that there have been a disproportionate number of deaths resulting from encounters with the police in Jamaica, yet no prosecutions of police officers have taken place for their actions. According to the Petitioners, this amounts to a "system of police impunity [that] could be regarded as a policy in violation of the American Convention on Human Rights." [FN4]

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[FN4] Petitioners' Submissions dated June 13, 2003, para. 73.

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29. The Petitioners also allege that Jamaica is responsible for violating Mr. Gayle's right to humane treatment under Article 5 of the Convention. They claim in this regard that when security forces assaulted Michael Gayle on August 21, 1999, he suffered inhuman or degrading treatment and a violation of his inherent right under Article 5(1) "to have his physical, mental and moral integrity respected." To support these allegations, the Petitioners provide descriptions of the manner in which the assault was alleged to have been carried out and the injuries suffered by Mr. Gayle as a result. The Petitioners also allege that the treatment inflicted on Mr. Gayle by State agents amounts to torture as prohibited by Article 5(2) of the American Convention and as defined by Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 2 of the Inter-American Convention to Prevent and Punish Torture.

30. In addition, the Petitioners argue that the State is responsible for violating Mr. Gayle's right to liberty and security as enshrined in Article 7 of the Convention. The Petitioners claim that the actions of State agents infringed upon this right when Mr. Gayle was unlawfully detained following false charges. The Petitioners state in this connection that in oral testimony under oath at the Coroner's Inquest, Police Constable Mark Anthony Hylton admitted that the charges laid against Mr. Gayle the night of August 21, 1999 were in fact false.

31. The Petitioners also assert that the failure of the State to undertake adequate reparations for the violation of fundamental human rights, and the general pattern of police impunity in Jamaica, amount to a violation of Articles 8 and 25 of the Convention as any ostensibly available remedies are in fact illusory. Further, they argue that the manner in which the Jamaican Constitution establishes the DPP is not compatible with principles of independence and impartiality enshrined under Articles 8 and 25 of the Convention. The Petitioners claim that Mr. Gayle and his family did not receive the judicial protection that the State is required to grant them according to Articles 8, 25 and 1(1) of the Convention because they did not have access to simple recourse before a competent, independent and impartial authority and because the next of kin were not informed of his fate and who the perpetrators were.

32. Finally, in their observations on the merits of the case, the Petitioners allege a violation of the right of Michael Gayle's mother, Jenny Cameron, to humane treatment under Article 5 of the Convention. It is contended that Ms. Cameron has suffered a continuing violation of her rights under Article 5 as a result of the "anxiety and suffering"[FN5] that she has experienced due to the fact that she witnessed her son's beating as well as incidents of threats and harassment to which the Petitioners claim Ms. Cameron and her family have been subjected in connection with Mr. Gayle's death.

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[FN5] Petitioners' Submissions dated April 24, 2004, para. 35, citing I/A Court H.R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Ser. C N° 4, para. 145.

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## B. Position of the State

33. In its submissions on the merits, Jamaica replied to each of the allegations set forth by the Petitioners. The State accepts liability for Michael Gayle's death and acknowledges its responsibility under international law for having violated Mr. Gayle's human rights as enshrined in Article 4 of the Convention.[FN6] Jamaica acknowledges that Mr. Gayle died as a result of the actions of the joint security forces, who used excessive force that went well beyond the scope of legitimate conduct of State agents. The State also points out that the Jamaica Constabulary Force ("JCF") has reviewed its policy of the "Use of Force" and has adopted a new policy that places greater accountability on those in charge of operations. The State further accepts responsibility for the violation of Mr. Gayle's right to humane treatment under Article 5 of the Convention as a necessary corollary to the acceptance of liability for his death.[FN7] The State disputes the Petitioners' contentions on the remaining grounds.

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[FN6] State's observations dated June 21, 2004, para. 2.

[FN7] State's observations dated June 21, 2004, paras. 2, 4.

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34. With respect to the State's duty to investigate under Article 4, Jamaica asserts that the investigations carried out by the DPP and BSI were transparent, diligent and in good faith. According to the State, these investigations involved numerous efforts to identify the individuals responsible for Mr. Gayle's death, even if they did not lead to criminal prosecutions. In addition, an investigator from the Office of Professional Responsibility concluded that Constable Anthony Hylton, who had admitted during the Coroner's Inquest that the charges against Mr. Gayle were false, engaged in discreditable conduct in filing false charges against Mr. Gayle, for which Constable Hylton was interdicted from duty to receive three quarters of his salary, effective from December 29, 1999. According to the State, the charges are pending against Constable Hylton at a Court of Enquiry. The State also points to the Jamaica Defence Force ("JDF") which collected statements and interviewed individuals in attempts to ascertain what transpired the night of August 21, 1999. The officer-in-charge of the soldiers present at the curfew was charged with "Neglect to the prejudice of good order and military discipline" contrary to Section 75 of the Defense Act. The officer was tried by the Appropriate Supervisory Authority and found guilty. He received a severe reprimand and offered his resignation, which was accepted.

35. The State relies upon the comments of the Inter-American Court on Human Rights in its judgment in the Velásquez Rodríguez Case that "[t]he duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result." [FN8] The State maintains that it has carried out its duty to investigate with due care and diligence, such that there has been no further violation of Mr. Gayle's rights.

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[FN8] State's observations dated June 21, 2004, para. 15, citing Velásquez Rodríguez Case, supra, para.177.

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36. Jamaica disputes the Petitioner's claim regarding a violation of Article 4 due to a lack of independence of the investigators. Jamaica contends that the Petitioners did not cite authority from the Inter-American system to support the assertion that a lack of independence could amount to a violation of the right to life. As a matter of law, therefore, Jamaica rejects the notion that an investigation of police actions would necessarily be compromised if conducted by other members of the police force, in this case the BSI.

37. Regarding the Coroner's Inquest, the State challenges the Petitioner's reliance on jurisprudence from the European Court of Human Rights ("ECHR") with respect to the principles engaged by the right to life as it relates to Coroner's Inquests. According to the State, the Coroners Act in Jamaica places responsibility for jury selection upon the Coroner, not the Police as argued by the Petitioners. The State also claims that no negative inference should be drawn from the fact that jury members are paid by the State to attend court. The State rejects the Petitioner's claim that there was excessive representation of the State or that this would have an adverse effect on the jury. Further, the State asserts that the Petitioners offer no support for their

contention that the Coroner failed to compel the presentation of all evidence, and that in any event, the law only requires the Coroner to tender all evidence that the Coroner thinks it expedient to examine. According to the State, the Coroner's Act does not require the jury to specifically identify individuals who may be responsible while concluding that manslaughter took place.[FN9]

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[FN9] State's observations dated June 21, 2004, para. 24(iv), citing Coroners Act of Jamaica, section 19(5).

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38. With respect to the Director of Public Prosecutions, the State emphasized that the file on the death of Michael Gayle is not closed and the DPP has discretion to continue with it if new evidence is uncovered. The State adds that by virtue of section 94 of the Jamaican Constitution, the DPP acts independently of the State, and therefore that the State cannot compel the DPP to pursue proceedings against specific individuals for the murder or manslaughter of Michael Gayle. Jamaica also argues that it is not a violation of the right to life for the DPP to fail to give reasons for a decision not to prosecute and that the ECHR jurisprudence cited by the Petitioners to support the contrary should not be applied in the Inter-American system.

39. The State asserts that in a case involving allegations that a death resulted from beatings by State agents, it is essential to be able to determine who inflicted the injuries and thereby place blame on the culpable individuals. According to the State, the bare fact that a person was present at the scene does not, without more, make him liable for the crimes that were committed. The State points out that the DPP concluded that there was insufficient evidence to charge any individual with manslaughter relating to the death of Michael Gayle. Jamaica also argues that there is no evidence that Mr. Gayle presented himself as someone suffering from a mental illness when he approached the barricade, or that the members of the security forces were aware of his condition.

40. The State has also made four submissions in response to the Petitioner's claims of various inadequacies in the investigation conducted that amounted to a violation of the right to life. First, the State contends that the Petitioner could not call into question the findings of the autopsy, which was performed by a medical expert engaged by the family, not the Government's pathologist.

41. Jamaica also refutes the allegation that there were delays in the initiation and conduct of the investigation. According to the State, the investigation began the day after Michael Gayle's death with statements from civilian witness, while interviews of security force personnel began one week later. The State submits that this approach to the investigation was "methodical and diligent".

42. Third, the State claims that according to the records of the JDF, the investigators interviewed all members who were pertinent to the investigation, and that Commissioner of Police was also sent a list of soldiers who were part of the curfew operation on August 21, 1999.

43. Fourth, the State contends that, contrary to the Petitioners' assertion, the Deputy Solicitor, acting on instructions of the Defence Board, delivered to the Coroner a total of thirteen statements taken from both civilians and soldiers relating to the beating of Mr. Gayle.

44. With respect to the Petitioners' claim that the State is responsible for a violation of Mr. Gayle's right to personal liberty and security under Article 7 of the Convention, Jamaica objects to the claim having been raised for the first time in the Petitioners' second communication of submissions on the merits. The State argues that this denied it the opportunity to defend its interest in relation to the claim. Moreover, the State asserts that the Estate of Michael Gayle could have brought an action in the local courts for a domestic remedy but failed to do so and therefore the Commission ought not to consider this ground based on the failure to exhaust domestic remedies.

45. Jamaica argues that Article 8 of the Convention does not apply to the facts of this case as it provides for access to the courts and protection of the right to due process of an accused. The State asserts that the Petitioners have "confused the right to a fair trial with the putative duty to prosecute persons accused of criminal wrongdoing." [FN10]

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[FN10] State's observations dated June 21, 2004, para. 45.

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46. The State further asserts that there has been no deprivation of the Petitioners' right to a fair hearing because of the alleged failure to prosecute. Rather, as a matter of law the effectiveness of criminal investigation procedures as they relate to third parties should be considered under Articles 4 and 25 of the Convention. Jamaica claims that Article 25 requires the provision of a domestic remedy to grant appropriate relief for an alleged violation of the Convention. In this case, the State's acceptance of liability for Mr. Gayle's death and the pursuit of a negotiated settlement with the Estate of Michael Gayle demonstrate that Jamaican law and practice provide the right to judicial protection contemplated by Article 25. The State takes the position that the settlement negotiations in the civil proceedings contemplate that the award of compensation will include an amount for the violation of Mr. Gayle's constitutional rights, and that this process should provide appropriate redress.

47. Finally, as regards the Petitioners' claim concerning violations of the right to humane treatment of Michael Gayle's mother under Article 5 of the Convention, the State objects to the claim on the ground that it was not raised prior to the consideration of merits stage in the proceedings. By not having raised the alleged violation at the admissibility stage, the State alleges that the Petitioners denied Jamaica the opportunity to defend its interest in relation to the claim. The State also argues that the claim is inadmissible because Ms. Cameron has not attempted to seek redress for the alleged violations of her rights under domestic law. Furthermore, the State argues that the claim is based on erroneous allegations that Ms. Cameron witnessed her son's beating. In particular, the State notes that in a statement made to the police on August 24, 1999, Ms. Cameron indicated that she arrived at the scene of the incident only after the beating had occurred. The State also disputes the Petitioners' claim that Ms. Cameron and her family have been subjected to threats and intimidation, indicating that the State is not

aware of such incidents and that they are not indicated in the facts contained in any of the Petitioners' submissions.

48. Based on the foregoing submissions, the State accepts liability for Mr. Gayle's death and acknowledges its international responsibility for the violations of Mr. Gayle's human rights enshrined in Articles 4 and 5 of the American Convention. Jamaica objects on procedural grounds to the claim concerning a violation of Mr. Gayle's Article 7 right to personal liberty and security on the basis that they were raised for the first time in the Petitioners' submissions on the merits. In addition, Jamaica asserts that Article 8 of the Convention is not applicable to the facts of this case and denies that there has been a violation of Articles 8 and 25 because the Estate of Michael Gayle and the Government are engaged in settlement negotiations that will provide appropriate redress. Finally, Jamaica objects on procedural grounds to the claim concerning a violation of Ms. Cameron's right to humane treatment being raised for the first time in the Petitioners' submissions on the merits, and argue further that the allegations upon which the claim has been made are erroneous.

#### IV. ANALYSIS

49. The Petitioners have raised four principal issues in their petition. First, they allege that the State is responsible for violating Mr. Gayle's right to life under Article 4 of the Convention because the beating by security force personnel led to his death and based upon the State's failure to undertake a proper investigation into his death. Second, they allege that the State is responsible for violating Mr. Gayle's right to humane treatment under Article 5 of the Convention because the intentional beating he suffered. The Petitioner's also allege a violation of the right to humane treatment of Mr. Gayle's mother, Jenny Cameron. Third, the Petitioners claim that the State is responsible for violating Mr. Gayle's right to personal liberty because he was arbitrarily arrested and detained. Fourth, the Petitioners allege that Jamaica is responsible for violating Mr. Gayle's rights under Articles 8 and 25 of the Convention by failing to properly investigate, prosecute and punish those responsible.

50. The parties are in substantial agreement on the events immediately surrounding Mr. Gayle's death. They differ in several respects, however, concerning certain aspects of the investigations undertaken after Mr. Gayle's death. Where relevant, the Commission will set out its determination on specific facts in the course of its analysis on the merits of the case.

##### A. Article 4 – Right to Life

51. The Petitioners have alleged that the State is responsible for violations of Mr. Gayle's right to life contrary to Article 4(1) of the Convention, in conjunction with the State's obligation under Article 1(1) of the Convention. Article 4(1) of the Convention provides that no one shall be arbitrarily deprived of his life, and Article 1(1) imposes on States Parties a positive obligation to respect and to ensure the rights and freedoms recognized under the Convention.

52. In its submissions before this Commission, the State has accepted liability for Mr. Gayle's death and the corresponding violation of his right to life under Article 4 of the Convention,[FN11] a development for which the Commission commends the State.

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[FN11] State’s observations dated June 21, 2004, para. 2.

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53. Consistent with the observations of the Petitioners and the State in this case, the Commission concludes based upon the information and evidence presented that members of a joint Jamaican security force, comprised of members of both the Jamaican Constabulary Force and the Jamaican Defence Force (hereinafter the “joint security force”), unlawfully beat Michael Gayle on the night of August 21, 1999 and that this assault resulted in his death two days later. The State has publicly conceded that “[a]ny plausible interpretation of the facts leads to the conclusion that Michael Gayle died due to the actions of agents of the State”[FN12] and that the security forces used excessive force against Mr. Gayle. Jamaica accepts responsibility for the violation of Mr. Gayle’s right to life due to the excessive use of force that “went well beyond the scope of legitimate functions of State agents.”[FN13]

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[FN12] Gov’t ‘regrets’ Michael Gayle’s death, Jamaica Daily Gleaner, March 11, 2004, cited in State’s Submissions on the Merits, June 21, 2004, para. 2.

[FN13] State’s observations June 21, 2004, para. 4.

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54. The State’s admission is consistent with the results of the autopsy performed on Mr. Gayle’s, which concluded that he had died from Peritonitis secondary to traumatic rupture of the stomach and that Mr. Gayle’s injuries were consistent with a beating that included gun butts, punches and kicks with military boots.

55. Accordingly, based upon the State’s admission and the information presented, the Commission concludes that the State is responsible for violations Mr. Gayle’s right to life under Article 4 of the American Convention, in conjunction with its obligations under Article 1(1) of the Convention.

56. The Petitioners have also argued that Jamaica has violated Mr. Gayle’s right to life enshrined in Article 4 by reason of its failure to conduct an adequate investigation into his death. In this respect, the Commission notes that in the recent decision of the Inter-American Court on Human Rights in the 19 Merchants Case, Judge Medina Quiroga, in a partially dissenting judgment, advocated an approach according to which the obligation of the State to investigate, prosecute and punish a human rights violation should be considered to be derived from the substantive right concerned and, where this obligation is found to exist, the means of compliance are subject to the due process requirements under Article 8 of the Convention.[FN14] Without foreclosing the possible adoption of this approach in other cases, the Commission has decided to address the Petitioners’ allegations in the present case in light of the longstanding jurisprudence of the inter-American system whereby the State’s obligation to conduct a thorough, prompt, and impartial investigation is analyzed as a function of the right to a fair trial and the right to judicial protection under Articles 8 and 25 of the Convention, in conjunction with its obligations under Article 1(1) of the Convention. Accordingly, the Commission will

address the Petitioners' submissions concerning the investigation of Mr. Gayle's death in its analysis of the foregoing provisions in Part IV(D) below.

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[FN14] See I/A Court H.R., 19 Merchants Case, Judgment of July 5, 2004, Ser. C N° 109, Partially dissenting opinion of Judge Cecilia Medina Quiroga.

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B. Article 5 – Right to Humane Treatment

57. The Petitioners have also argued that the State is responsible for violations of Mr. Gayle's right to humane treatment under Article 5 of the Convention in connection with the beating to which he was subjected and its subsequent effects prior to his death.

58. As with the Petitioner's allegations under Article 4 of the Convention, the State has accepted before this Commission that Michael Gayle was subjected to a collective beating by State agents and has acknowledged its international responsibility for a violation of his human rights under Article 5 of the Convention.[FN15]

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[FN15] State's observations dated June 21, 2004, para. 4.

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59. Consistent with the State's admission in this regard, the Commission is satisfied based upon the information and evidence presented that Mr. Gayle was the victim of a serious assault on August 21, 1999 at the hands of members of Jamaica's joint security force. According to the record, the assault lasted approximately 12 minutes, during which time Mr. Gayle was beaten with gun butts, punched and kicked with military boots.[FN16] The assaults were so severe that they caused Mr. Gayle's stomach to rupture, which resulted in his death two days later. Prior to his death, Mr. Gayle continued to suffer from the injurious effects of his beating.

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[FN16] See, e.g., Testimony of Police Constable Richard Christopher Porter, during Coroner's Inquest into the death of Michael Gayle.

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60. Moreover, according to the information presented, Mr. Gayle did not receive prompt medical attention for his injuries. After the beating had occurred, he was taken to the police station and falsely charged with assaulting a police officer and resisting arrest before his mother was permitted to take him to the hospital. According to the testimony of Mr. Gayle's sister, Ingrid Cameron, at the Coroner's Inquest, Mr. Gayle waited more than two hours to see a doctor on the day of his death. The forensic pathologist who performed the autopsy on Michael Gayle's body indicated that with prompt and proper medical attention, Michael Gayle could have survived his injuries.

61. Article 5(1) of the Convention provides that “Every person has the right to have his physical, mental, and moral integrity respected” and Article 5(2) requires that no person “be subjected to torture or to cruel, inhuman or degrading punishment or treatment.” The conduct proscribed by Article 5(2) is universally and without exception prohibited under both customary and conventional international law.[FN17] In this connection, the Commission has indicated that inhumane treatment includes unjustifiable conduct that causes severe physical, mental or psychological pain or suffering, and that treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience.[FN18]

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[FN17] See, e.g., I/A Court H.R., Cantoral Benavides Case, Judgment of August 18, 2000, Ser. C No 69, para. 95.

[FN18] Case 10.832, Report No 35/96, Luis Lizardo Cabrera (Dominican Republic), Annual Report of the IACHR 1997, para. 77.

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62. Further, with regard to the conceptual difference between the term "torture" and "inhuman or degrading treatment", the Inter-American Commission has referred to Article 2 of the Inter-American Convention to Prevent and Punish Torture[FN19] and has shared the view of the European Commission on Human Rights that torture is an aggravated form of inhuman treatment perpetrated with a purpose, namely to obtain information or confessions, as a preventative measure, or to inflict punishment.[FN20] The Inter-American Commission has also found that the essential criterion to distinguish between torture and other cruel, inhuman or degrading treatment or punishment "primarily results from the intensity of the suffering inflicted".[FN21]

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[FN19] Article 2 of the Inter-American Torture Convention defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.”

[FN20] Case 10.832, Report No 35/96, Luis Lizardo Cabrera (Dominican Republic), Annual Report of the IACHR 1997, para. 79, citing Eur. Com. H.R., The Greek Case, 1969, 12 Y. B. Eur. Conv. on H.R. 12, at 186.

[FN21] Luis Lizardo Cabrera Case, supra, para. 80, citing Eur. Court H. R., Ireland v. United Kingdom, judgment of October 9, 1979, Ser. A No 25, para. 167.

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63. In the present case, the beating of Michael Gayle by security force members was intentional, was purported to have been imposed as a measure to prevent Mr. Gayle from crossing the curfew barricade, was excessive, and caused severe physical and mental pain and suffering. These factors, together with the nature and intensity of the treatment inflicted upon Mr. Gayle, including the failure to provide him with prompt medical attention and the protracted suffering caused to Mr. Gayle as a result, lead the Commission to conclude that Mr. Gayle was the victim of torture within the meaning of Article 5(2) of the Convention.

64. Accordingly, the Commission finds the State responsible for violating Mr. Gayle's right to humane treatment under Article 5 of the Convention, including his right under Article 5(2) not to be subjected to torture, in conjunction with the State's obligations under Article 1(1) of the Convention.

65. The Petitioners have also alleged a violation of the human rights enshrined in Article 5 of Mr. Gayle's mother, Jenny Cameron, based upon the impact that her son's beating and death are alleged to have had upon her.[FN22] In this respect, it is indicated that Ms. Cameron was present as her son suffered from the physical effects of the assault up until his death. The Petitioners also claim that Ms. Cameron witnessed the police lay false charges against Michael Gayle, watched as her son vomited blood and helped him sit upright in the taxi ride home from the hospital, and that she and her family have been the victims and threats and intimidation in connection with Mr. Gayle's beating and death. The State has argued in response that claim and its underlying factual allegations were not raised by the Petitioners during the admissibility stage of the proceedings and therefore cannot be properly considered by the Commission on the merits, and on the basis that the Petitioners' factual claims are erroneous or unsubstantiated.

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[FN22] Petitioners' observations dated April 24, 2004, para. 25.

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66. In this connection, the Commission notes that Ms. Cameron was not included as an alleged victim in the petition that was lodged with the Commission. Further, the petition did not contain all of the factual and other allegations upon which the Petitioners currently rely in support of Ms. Cameron's claim, including the nature and extent of threats and intimidation alleged to have been made against Ms. Cameron and her family. In addition, the State has taken issue with the accuracy of the Petitioners' allegations in these respects and has argued that it has not been afforded an adequate opportunity to defend against the admissibility and merits of these claims.

67. In these circumstances, the Commission considers that the basis for the allegations relating to the rights of Jenny Cameron under the Convention did not form a part of the claims presented to and admitted by the Commission and therefore will not be determined in this report. This finding does not, however, preclude the possibility that Ms. Cameron, as Mr. Gayle's next-of-kin, may be considered the beneficiary of reparations relating to determined violations of Mr. Gayle's rights under the Convention.

### C. Article 7 – Right to Personal Liberty

68. The Petitioners argue in their submissions on the merits of the present case that the State is responsible for violations of Michael Gayle's right to personal liberty under Article 7 of the Convention because of he was detained without lawful cause, based on intentionally false charges.

69. Article 7 of the Convention was not among the provisions of the Convention that were included in the Petitioners' petition in this matter, nor were they among the provisions of the Convention referred to by the Commission in admitting the claims pertaining to Mr. Gayle in the case.

70. At the same time, the Commission notes that according to the jurisprudence of the inter-American system, both the Commission and the Court have the authority, in accordance with the general principle of law *iura novit curia*, to apply provisions of the Convention based upon the acts or situations denounced in a petition in circumstances where a petitioner has not specifically alleged violations of those provisions.[FN23]

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[FN23] See e.g. Case N° 10.606, Samuel de la Cruz Gómez v. Guatemala, Annual Report of the IACHR 1997, pp. 623, 635; Case N° 10.580, Manuel Stalin Bolaños Quiñones v. Ecuador, Annual Report of the IACHR 1995, pp. 84, 100. See generally Velásquez Rodríguez Case, *supra*, para. 163 (citing the general principle of law, *iura novit curia*, under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them); I.C.J., " Lotus ", Judgment N° 9, 1927, P.C.I.J., Series A N° 10, p. 31.

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71. In the present case, the factual claims upon which the alleged violation of Article 7 is based, namely the manner in which Mr. Gayle was detained and arrested, formed a part of the Petitioners' original petition pertaining to the same alleged victim, and were among the circumstances relating to Mr. Gayle that were admitted by the Commission in its report 8/03. Therefore, the State has had ample opportunity to challenge the allegations raised by the Petitioners relating to the manner in which Mr. Gayle was arrested by authorities. Accordingly, invoking the *iura novit curia* principle, the Commission will consider whether the State may also be responsible for violating Mr. Gayle's rights under Article 7 of the Convention due to the manner in which he was detained and arrested by the joint security force.

72. Article 7 of the Convention recognizes and guarantees the right to personal liberty and includes the following requirements:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.

73. This article protects the fundamental human right to exercise personal liberty without arbitrary interference from the State,[FN24] including protection against unlawful arrests. In this connection, Articles 7(2) and 7(3) make clear that any deprivation of liberty must be in strict accordance with procedures established by law. Both the Commission and the Inter-American Court have previously emphasized that no one may be deprived of liberty except in cases or circumstances expressly provided by law, and that any deprivation of liberty must strictly adhere

to the procedures defined thereunder.[FN25] This includes ensuring against arbitrary arrest and detention by strictly regulating the grounds and procedures for arrest and detention under law.[FN26] It also includes ensuring prompt and effective judicial oversight of instances of detention, in order to protect the well-being of detainees at a time when they are wholly within the control of the state and therefore particularly vulnerable to abuses of authority.[FN27]

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[FN24] See, e.g., Case 11.543, Report N° 1/98, Rolando and Atanasio Hernández Hernández v. Mexico, Annual Report of the IACHR 1998, para. 51.

[FN25] See, e.g., IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 doc. 21 rev., 6 April 2001, Chapter VII, para. 37 [hereinafter IACHR Report on Guatemala (2001)], citing Case 11.245, Report N° 12/96, Jorge Alberto Giménez (Argentina), Annual Report of the IACHR 1995; I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, Ser. C N° 35, para. 43.

[FN26] The Inter-American Court has indicated, for example, that unless it is demonstrated that an individual was apprehended in flagrante delicto, his or her arrest must be shown to have been effected with a warrant issued by a competent judicial authority. Suárez Rosero Case, supra, para. 44.

[FN27] Case 11.205, Report N° 2/97, Jorge Luis Bronstein and others (Argentina), Annual Report of the IACHR 1997, para. 11. See similarly Case 12.069, Report N° 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paras. 37, 38.

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74. In the present case, it is undisputed that Mr. Gayle was detained by security forces at a curfew barricade on August 21, 1999, following which he was taken to the Olympic Gardens Police Station and charged with assaulting a police officer and resisting arrest. The Petitioners have also claimed, and the State has not disputed, that during the Coroner's inquest in this matter, one of the officers involved in the events, Police Constable Mark Anthony Hylton, admitted that the charges laid against Mr. Gayle on August 21, 1999 were in fact false. The State itself has indicated that as a result of Constable Hylton's admission, he was interdicted from duty to receive three quarters of his salary, effective from December 29, 1999, and that charges are pending against him at a Court of Enquiry.

75. Based upon these circumstances, the Commission concludes that Mr. Gayle's arrest by authorities on August 21, 1999 was not carried out in strict accordance with applicable law and therefore resulted in the unlawful and arbitrary detention of Mr. Gayle. Consequently, the Commission finds the State responsible for violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with its obligations under Article 1(1) of the Convention.

D. Article 8 and 25 – Right to a Fair Trial and Right to Judicial Protection

76. The Petitioners have contended that the State has failed to respect and ensure respect for the rights protected under the Convention, including the right to a fair trial and the right to judicial protection under Articles 8 and 25 of the Convention, because it has failed to conduct a thorough, prompt and impartial investigation into the circumstances of Mr. Gayle's death and to

bring those responsible to justice. The Petitioners also base their allegations upon a broader pattern of police impunity that they claim characterize police killings in Jamaica, as well as certain aspects of the procedures by which police killings are investigated in that State.

77. The State refutes the Petitioners' allegations on the ground that it has carried out its duty to investigate Mr. Gayle' killing with due care and diligence. Jamaica also argues that the Petitioners' challenges to the roles played by the police, the Director of Public Prosecutions, and Coroners Inquests in investigating killings associated with the State's security forces are either mistaken or misplaced and do not give rise to any violations of the State's obligation under the Convention.

78. Article 25 of the American Convention imposes on States Parties an obligation to provide everyone in their jurisdiction with access to effective mechanisms to protect them from violations of their rights, in the form of:

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 violations may have been committed by persons acting in the course of their official duties.

79. The Inter-American Court has described the central role played by the obligations under Article 25 of the Convention for the guarantee of fundamental rights in the following terms:

[T]he right of all persons to a simple and rapid remedy or to any other effective remedy before competent judges or tribunals that will protect them against acts that violate their fundamental rights "constitutes one of the basic pillars, not only of the American Convention, but also of the Rule of Law in a democratic society as per the Convention".[FN28]

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[FN28] I/A Court H.R., Cantoral-Benavides Case, Judgment of August 18, 2000, Ser. C N° 69, para. 163.  
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80. Further, the procedures afforded by states to provide protection for fundamental human rights must conform with the due process protections prescribed under Article 8 of the American Convention, which provides in part that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or an other nature."

81. Further in this regard, it is well-established in the jurisprudence of the inter-American system that there is an inherent connection between the State's obligation to respect and ensure human rights, to provide effective judicial protection for those rights, and to guarantee a fair trial in the determination of rights. The Inter-American Court of Human Rights noted this connection in the Velásquez Rodríguez case:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN29]

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[FN29] I/A Court H.R., Velásquez Rodríguez Case, Judgment on Preliminary Objections, June 26, 1987, Ser. C Nº 1, para. 91.

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82. In addition, both the Commission and the Court have held that in circumstances in which violations of the rights under the Convention may have been violated, Articles 8 and 25 of the Convention, in conjunction with the obligations under Article 1(1) of the Convention, oblige state parties to undertake thorough, prompt and impartial investigations into those allegations and the prosecute and punish those responsible.[FN30] The Inter-American Court has described this obligation in the following terms:

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[FN30] See. e.g., Juan Carlos Abella v. Argentina, Case 11.137, Report Nº 55/97, Annual Report of the IACHR 1997, para. 412.

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174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party. Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. On the other hand, subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case.

176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups

to act freely and with impunity to the detriment of the rights recognized by the Convention.[FN31]

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[FN31] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4 (1988), paras. 174-176; I/A Court H.R., Godínez Cruz case, Judgment of January 20, 1989, Ser. C N° 5, para. 184.

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83. The State is correct in its assertion that a breach of the duty to investigate does not arise merely because the investigation conducted does not lead to a satisfactory result. In each case, however, it must be demonstrated that the investigation carried out was thorough, prompt and impartial, such that the any failure to produce sufficient evidence to lay criminal charges “was not the product of mechanical implementation of certain procedural formalities without the State genuinely seeking the truth.”[FN32] Further, a state may not rely upon procedures or standards prescribed under its domestic law as a justification for a failure to conduct an investigation that complies with its international obligations. To the contrary, states have a duty “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”[FN33]

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[FN32] Juan Carlos Abella v. Argentina, *supra*, para. 412.

[FN33] Velásquez Rodríguez Case, *supra*, para. 166.

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84. In determining whether an investigation undertaken by a State has complied with the requirements of Article 8 and 25 of the Convention, the Commission may have regard to instruments promulgated at the international level that provide useful guidelines as to the minimum standards applicable to the investigation and prosecution of violations of internationally-protected human rights. These instruments include the U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (“U.N. Principles”), as well as the Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions (“Minnesota Protocol”) associated with that instrument,[FN34] which have been considered by the Commission in previous decisions.[FN35]

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[FN34] UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65 of May 24, 1989; United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12 (1991), Part III.

[FN35] See, e.g., Manuel Stalin Bolaños Quiñones v. Ecuador, Case 10.580, Report N° 10/95, Annual Report of the IACHR 1995, paras. 32-34; Juan Carlos Abella v. Argentina, Case 11.137, Report N° 55/97, Annual Report of the IACHR 1997, paras. 413-424, Rolando and Atanasio Hernández Hernández v. Mexico, Case 11.543, Report N° 1/98, Annual Report of the IACHR 1998, paras. 74-80.

85. Paragraphs 9 and 18 of the U.N. Principles describe the obligation to investigate and prosecute extra-judicial, arbitrary and summary executions in the following terms:

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

[ . . . ]

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

86. Further, the Minnesota Protocol emphasizes the importance of gathering and preserving evidence of human rights violations, stating as follows:

One of the most important aspects of a thorough and impartial investigation of an extra-legal, arbitrary and summary execution is the collection and analysis of evidence. It is essential to recover and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified.

87. In evaluating the efforts undertaken by authorities in Jamaica in investigating the death of Michael Gayle, the Commission recognizes the challenges faced by the government and law enforcement authorities in Jamaica in combating serious crimes, including murder. For example, by August of 1999, when Mr. Gayle was killed, it was reported that a total of 505 people had already been slain that year for a population of approximately 2.6 million, maintaining Jamaica's status as having one of the highest per capital murder rates in the world.[FN36] The disproportionately high murder rate in Jamaica has continued to the present day.[FN37] In this respect, the Commission emphasizes that international law obliges member states to take the measures necessary to prevent crime and other forms of violence and to guarantee the security of their populations.[FN38] As noted by the Inter-American Court, "the State has the right and duty to guarantee its security"[FN39] which may justify the use of force, including deadly force, in certain limited situations. But there are limits to the law enforcement powers of the State - State action must not be taken at the expense of fundamental human rights.

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[FN36] See, e.g., Serge F. Kovaleski, Murder “Madness” Bedevils Jamaica, Wash. P, July 27, 1999, at A13.

[FN37] See, e.g., Jamaica sees 50 slayings in one week, Associated Press, August 16, 2004.

[FN38] See Case 11.182, Report N° 49/00, Asencios Lindo et al. (Peru), Annual Report of the IACHR 2000, para. 58. See similarly I/A Court H.R., Neira Alegría Case, Judgment of January 19, 1995, Ser. A N° 20.

[FN39] Velásquez Rodríguez Case, supra, para. 154.

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88. In this connection, the Commission has also taken into account information indicating that impunity for killings by the police remains a serious problem in Jamaica. As the Petitioners noted in their petition and subsequent submissions, a pattern has been identified in Jamaica whereby a disproportionately large number of killings are associated with the State’s security forces, but where very few prosecutions have been undertaken in relation to those killings.[FN40] The Petitioners indicate in this regard that the number of civilians shot and killed by the police over the past decade have averaged 140 per year, while the number of cases in which the police have been held criminally responsible for those killings are negligible[FN41] - for example, of 267 incidents of police killings investigated by the BSI between July and October 2000, only 13 resulted in criminal charges against members of the Jamaica Constabulary Force.[FN42] The U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Execution has similarly observed following a recent visit to Jamaica that the State shows an “alarming” number of killings by the police and security forces of civilians, including 151 in 1999, 149 in 200, 156 in 2001 and 152 in 2002, and at the same time the State had not provided information concerning any police officer or soldier who had been convicted for an extrajudicial killing.[FN43] In the face of these circumstances, Jamaica faces a particularly high burden in establishing that its investigations of police killings in specific cases have been thorough, prompt and impartial.

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[FN40] See, e.g., Petitioners’ petition of March 16, 2002, at pp. 3-4, citing Human Rights in Jamaica: An America’s Watch Report (New York, NY: The America’s Watch Committee, 1986), p. 1; Jamaica: Police Killings – Appeal Against Impunity (London: UK: Amnesty International, 2001); Country Reports on Human Rights Practices for 2000, v. 2 (Washington, D.C.: US Government Printing Office, 2001), 2662-2664.

[FN41] Petitioners’ petition dated March 16, 2002, p. 3, citing Report of the National Task Force on Crime (Wolfe Report, April 1993); The Police Executive Research Forum Report (The American Chamber of Commerce of Jamaica, 2001).

[FN42] The Police Executive Research Forum Report (The American Chamber of Commerce of Jamaica, 2001) at 25.

[FN43] U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to Jamaica: Civil and Political Rights, Including the Question of Disappearances and Summary Executions, September 26, 2003, UN Doc. E/CN.4/2004/7/Add.2, at paras. 22, 24 (hereinafter “UN Report on Jamaica”).

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89. Upon reviewing the circumstances surrounding the investigation of Mr. Gayle's death in Jamaica, the Commission is concerned about several aspects of the procedures followed by the State, particularly those involving efforts to identify the individuals responsible. In particular, the Petitioners have alleged, and the State has not disputed, that due control was not exercised over the scene of Mr. Gayle's beating, no forensic tests were conducted at the scene, none of the weapons or implements were recovered or examined, no police sketches were made from witness statements, and there were no attempts to form identification parades or lineups. Moreover, the information provided by the Petitioners and the State indicates that interviews of members of the security forces present at the scene of the assault were not conducted until August 30, 1999, more than one week after Michael Gayle's beating, and that the first statements from military officers were not taken until September 9, 1999, almost three weeks after the incident.

90. In the Commission's view, these omissions in the police investigation failed to accord with the minimum international standards governing the investigation of extra-judicial, arbitrary or summary executions, which emphasize the importance of recovering and preserving physical evidence, and interviewing potential witnesses so that the circumstances surrounding a suspicious death can be clarified.[FN44] The Commission also considers that the State's failure to gather physical evidence and witness statements from the scene of the crime undermined subsequent efforts to identify and prosecute the officers responsible for Mr. Gayle's death. More particularly, had such information been gathered as quickly as possible after Michael Gayle's death, there may have been some physical evidence connecting Mr. Gayle's injuries to particular officers.

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[FN44] See United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, *supra*, Part C(1)(i) (providing that "[c]astings should be made and preserved of pry marks, tyre or shoe impressions, or any other impressions of an evidentiary nature"), (j) (providing that "[a]ny evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed").

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91. Further, the Commission cannot accept the State's contention that its approach in interviewing security personnel one week after the incident was "methodical and diligent." Security force personnel were best placed to identify individual perpetrators, especially in view of the fact that identification lineups were not utilized as a means of providing civilian witnesses with an opportunity to identify individual officers. By failing to carry out these interviews expeditiously, the State not only jeopardized the reliability of any accounts given by officers concerning pertinent events, for example through the coordination of evidence, but also exacerbated the possibility that the officers would refuse to implicate one another, rendering it impossible to substantiate individual responsibility based upon the testimony of officers who were at the scene.[FN45]

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[FN45] See similarly IACHR, Third Report on the Situation of Human Rights in Colombia 1999, Ch. V.

92. The Petitioners have also challenged the propriety of the investigation in Mr. Gayle's case on the basis that the same police force implicated in Mr. Gayle's death was also responsible for investigating the circumstances of his death and therefore was not independent.

93. In this connection, the Commission considers it essential to view the investigation in the present case in the broader context of the problem of impunity for police killings in Jamaica. As noted above, the information presented to the Commission indicates that despite the high incidents of killings involving the security forces in Jamaica, these incidents rarely result in the prosecution or conviction of the officers involved. This in turn has led to the perception in Jamaica that the police are above the law and has adversely affected the relationship of trust that should exist between a population and the forces responsible for protecting them. The Commission shares the view of the European Court of Human Rights that the failure to initiate a prompt and independent investigation with a sufficient degree of public scrutiny into the process and its outcomes undermines public confidence in the capability of the investigation to determine accountability by sending a message of official tolerance of unlawful acts.[FN46] In this context, the Commission considers paragraph 11 of the U.N. Principles to be pertinent, which observes that:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality ... or because of the apparent existence of a pattern of abuse ... Governments shall pursue investigations through an independent commission of inquiry or similar procedure.[FN47]

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[FN46] See, e.g., Eur. Court H.R., *Hugh Jordan v. The United Kingdom*, Judgment of May 4, 2001, paras. 106-109.

[FN47] U.N. Principles, *supra*, para. 11. See similarly *Velásquez Rodríguez Case*, *supra*, note 2, para. XXX (observing that "the offer of an investigation in accord with Resolution 30/83 of the Commission resulted in an investigation by the Armed Forces, the same body accused of direct responsibility for the disappearances. This raises grave questions regarding the seriousness of the investigation").

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94. Accordingly, the Commission considers that in the present case, the investigation into Mr. Gayle's death should have been conducted from the outset by a body independent from both the Jamaican Constabulary Force and the Jamaican Defence Force, with the authority to fully and effectively investigate both of these bodies and their respective roles in Mr. Gayle's wrongful death in a manner that would result in the criminal prosecution and punishment of those responsible.

95. The Commission notes in this regard the existence in Jamaica of the Police Public Complaints Authority (PPCA), which was created by statute for the very purpose of enhancing independent oversight of investigations by the Jamaican Constabulary Force. The PPCA's responsibilities include the following:

- (a) to monitor the investigation by the Jamaica Constabulary Force of any complaint to ensure that the investigation is conducted impartially;
- (b) to supervise the investigation of complaints by the Force;
- (c) to undertake direct investigation of complaints in certain circumstances; and
- (d) to evaluate and report to the Justice Minister from time to time on the system of handling complaints.

96. There is no information on the record, however, indicating that the PPCA became involved in the investigation into Mr. Gayle's death, nor does it appear that the PPCA would have authority to investigate the conduct of members of the Jamaican Defence Force. Further, information presented to the Commission also indicates that the PPCA suffers from weaknesses relating to its funding and authority. The U.N. Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions observed of the PPCA that:

[I]legally, it does not have sufficiently strong powers to ensure that police officers who are requested to give a statement before the PPCA actually do so, as the current penalties for not cooperating with the PPCA are very weak. The current Police Public Complaints Act would benefit from a review and strengthening.[FN48]

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[FN48] UN Report on Jamaica, *supra*, para. 72.

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97. Deficiencies in the investigation of Mr. Gayle's death are also alleged by the Petitioners to include the procedures undertaken by the Coroner's Inquest. As noted by the Commission in the admissibility report for this case, a Coroner's Inquest is 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.[FN49] The purpose is not to determine individual culpability. As such, the Coroner's Inquest into the death of Michael Gayle achieved its purpose when the jury found that Mr. Gayle was unlawfully killed and recommended that the officers on duty at the barricade be charged with manslaughter. This cannot, however, be considered a substitute for a procedure by which violations of rights under the American Convention are effectively prosecuted and punished – this authority and responsibility lies with the criminal justice system. It is also noteworthy that, notwithstanding the jury's recommendation in the case that all of the officers at the scene be charged with manslaughter, no criminal charges have been laid against any of the officers potentially implicated in Michael Gayle's death.

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[FN49] Michael Gayle v. Jamaica, Case 12.418, Report № 8/03, Annual Report of the IACHR 2003, para. 11.

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98. Finally, the Petitioners argue that the decision of the Director of Public Prosecutions not to pursue criminal charges in relation to Mr. Gayle's death also undermined the propriety of the

State's efforts to investigate, prosecute and punish those responsible. In this respect, the Commission considers that the fact that a prosecutor may conclude, upon a thorough and impartial evaluation of available evidence, that criminal charges cannot or should not be pursued in a given case does not, in and of itself, lead to the conclusion that a state has failed in its obligation to investigate, prosecute and punish human rights violations.

99. In the present case, however, the Commission cannot accept the State's contention that the investigation into Mr. Gayle's death was properly resolved when the Director of Public Prosecutions refrained from bringing charges against any of the officers present because the "civilian witnesses present at the scene of the crime were not able to identify the security personnel at the barricade who administered the blows to Michael Gayle which led to his death." [FN50] In this respect, the Commission observes that most major legal systems recognize bases for individual criminal responsibility for acts or omissions beyond the direct perpetration of a crime that contribute to the commission of the crime. It is generally established, for example, that an individual can be held criminally responsible for aiding and abetting a crime where his or her conduct affected the actual commission of the offense before, during or after the incident. [FN51] Accordingly, the State cannot justify its failure to pursue criminal charges on the basis that its investigation was unsuccessful in identifying the individuals directly responsible for assaulting Mr. Gayle.

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[FN50] State's Observations dated August 24, 2004, para. 5.

[FN51] See generally IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (22 October 2002), para. 227. Indeed, grounds for individual criminal responsibility beyond the direct perpetration of a crime have been recognized in the context of prosecutions before international criminal tribunals. See, e.g., Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Annex to the Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), 48 U.N. SCOR (3175th mtg.), U.N. Doc. S/RES/808 (1993), Art. 71() (providing that "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute"; Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), entered into force July 1, 2002 Statute for the International Criminal Court, Art. 25(3)(a)-(c) ("In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;").

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100. Further, the information available indicates that the DPP's failure to pursue criminal charges in relation to Mr. Gayle's death stemmed in large part from the inadequacies in the investigation from its outset, as outlined above. In particular, the State has explained its inability

to prosecute criminal charges in this case on the basis that there was insufficient evidence to identify the role that specific individuals may have played in the assault. This impediment can in turn be connected to the flaws in the earlier investigation. The DPP's ability to charge any security force members with direct responsibility for beating of Michael Gayle was weakened because of the failure to process the scene and collect physical evidence immediately after suspicion arose of an unlawful killing. At the Coroner's Inquest, each of the witnesses cast blame on different individuals; that reality, coupled with the lack of corroborative physical and testimonial evidence, hindered efforts to identify precisely who dealt the blows to Mr. Gayle. Therefore, despite the fact that as many as thirteen joint security force members were present as witnesses or participants when Michael Gayle was assaulted, five years later no one has been criminally charged for the actions that caused his death. These unacceptable circumstances highlight the necessity of prompt and thorough investigations for the effectiveness of efforts to achieve accountability for serious violations of human rights.

101. With regard to the exercise of the DPP's discretion in particular, the State has argued that under the Constitution of Jamaica, the DPP has exclusive authority in Jamaica to institute, continue or terminate any criminal proceedings and that the State cannot interfere with the DPP's decisions in this regard. As the Commission observed above, however, the international obligations assumed by a state cannot be superseded by or made subject to the domestic laws of that state.[FN52] To the contrary, domestic legislation and procedures, including the decisions taken by bodies like the DPP, must accord with the State's international human rights obligations and the constitutional status of such bodies cannot be raised as a defense against the State's international responsibility for inadequacies in this regard. In cases such as the present involving violations of the right to life perpetrated by state agents, international standards require that those responsible be prosecuted and punished, and the State must take the legislative or other measures necessary to fulfill this obligation.

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[FN52] Vienna Convention on the Law of Treaties, article 27: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." See also, Juan Hernández v. Guatemala, Case 11.297, Report N° 28/96, Annual Report of the IACHR 1996, para. 40.

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102. Based upon the foregoing analysis, the Commission concludes that the State failed to undertake a thorough, prompt, and impartial investigation into the circumstances of the death of Michael Gayle, has not prosecuted and punished those responsible, and is therefore responsible for violations of Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, together with its obligations under Article 1(1) of the Convention.

103. The Commission has taken note the State's observations concerning measures it has taken to address some of the serious problems arising out of Mr. Gayle's case. The State indicated, for example, that the Jamaican Constabulary Force has adopted the Human Rights and the Police Use of Force and Firearms Policy, which attempts to reflect international human rights instruments and standards for the use of force including the principles set out in the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and

Firearms by Law Enforcement Officials. The State has also indicated that that Constable Hylton, who admitted to the false charges against Mr. Gayle, has been interdicted from duty on three quarters salary pending a Court of Enquiry into conduct. Further, the State claims that the officer-in-charge of the Jamaican Defence Force soldiers present at the curfew was tried and convicted of the military offence of “Neglect to the prejudice of good order and military discipline contrary to Section 75 of the Defence Act” for failing to report an incident that was known to him and was his duty to report, and that upon his conviction, the officer concerned offered his resignation, which was accepted. Further, the State contends that it has entered into settlement discussions in the context of civil proceedings brought on Mr. Gayle’s behalf before the courts in Jamaica.

104. The Commission acknowledges and commends the State for these initiatives, as well as for its initiative in acknowledging and accepting responsibility before this Commission for violations of Articles 4 and 5 of the American Convention in connection with Mr. Gayle’s death. At the same time, the Commission must emphasize that neither disciplinary actions nor civil actions for damages are adequate to fulfill the State’s obligation to ensure accountability for the serious human rights violations perpetrated against Mr. Gayle through the criminal prosecution and punishment of those responsible.

105. The Commission has observed on many occasions that impunity for violations of fundamental rights, including the rights to life and personal integrity, constitutes one of the of the principle obstacle to the effectiveness of the rule of law.[FN53] The brutal manner in which Jamaican security forces treated Michael Gayle in August 1999 is not only inexcusable, but suggests a collective mindset among members of the security forces that they should not and will not be held accountable for their actions that flagrantly violate the most basic rules governing humane treatment and the preservation of life. In the Commission’s view, the tragic circumstances of Mr. Gayle’s death starkly illustrate the dangers that arise when states fail on a systematic basis to ensure strict accountability on the part of its own agents for serious human rights violations. The Commission therefore urges Jamaica to take all of the measures necessary to ensure that the experience surrounding Mr. Gayle’s killing is never again repeated.

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[FN53] See, e.g., Annual Report of the IACHR 2003, Introduction, para. 3.

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## V. PROCEEDINGS SUBSEQUENT TO REPORT 72/04

106. The Commission examined this case in the course of its 121st regular session and on October 18, 2004 adopted Report N° 72/04 pursuant to Article 50 of the American Convention.

107. On November 2, 2004, the Commission transmitted Report N° 72/04 to the State, and requested that the Government of Jamaica inform the Commission within two months as to the measures adopted to comply the recommendations made to resolve the situation denounced.

108. As of the date of this report, the Commission had not received a response from the State to Report N° 72/04.

## VI. CONCLUSIONS

109. The Commission, based on the foregoing considerations of fact and law and the State's admission of responsibility for violations of Mr. Gayle's rights under Articles 4 and 5 of the Convention, and in the absence of a response from the State to Report N° 72/04, ratifies its conclusions that:

110. The State is responsible for violating Mr. Gayle's right to life under Article 4 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful killing at the hands of members of the Jamaican security forces.

111. The State is responsible for violating Mr. Gayle's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of the assault perpetrated upon him by State agents and its effects, which led to his death.

112. The State is responsible for violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful detention and arrest on false charges.

113. The State is responsible for violating Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

## VII. RECOMMENDATIONS

114. Based on the analysis and the conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF JAMAICA:

1. Grant an effective remedy, which includes the payment of compensation for moral damages suffered by Michael Gayle's mother and next-of-kin, Jenny Cameron, and a public apology by the State to the family of Michael Gayle.

2. Adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations.

3. Adopt such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, including training for members of Jamaican security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and arbitrary detention, and undertaking appropriate reforms to the procedures for investigating and

prosecuting deprivations of life committed by members of Jamaica's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings in the present report. In this respect, the Commission specifically recommends that the State review and strengthen the Public Police Complaints Authority in order to ensure that it is capable of effectively and independently investigating human rights abuses committed by members of the Jamaican security forces.

## VIII. PUBLICATION

115. By communication dated March 17, 2005, the Commission transmitted the content of this report, adopted as Report N° 27/05 pursuant to Article 51(1) of the Convention, to the State and to the Petitioners in accordance with Article 51(2) of the Convention and granted a period of one month within which to inform the Commission of the measures taken to comply with the Commission's recommendations.

116. By note dated May 4, 2005 and received by the Commission on May 6, 2005, the State delivered a response to the Commission's March 17, 2005 communication. In its response, the State indicated that it retained general reservations concerning the Commission's findings because, according to the State, it had already made important concessions in respect of Article 4 and 5 of the Convention and was therefore of the view that there was no need for further proceedings before the Commission. The State also indicated that, in its view, the right to a fair hearing or trial under Article 8 of the Convention only becomes relevant in proceedings before a tribunal of law and, since Mr. Gayle died before he had an opportunity to answer the criminal charges that were laid against him, a potential violation of Article 8 did not arise for consideration. In addition, the State indicated that it retained reservations concerning the value of the Commission's first recommendation in Report 27/05 because, in view of the State's acceptance of liability for Mr. Gayle's death, a settlement in the local courts was arrived at between Mr. Gayle's mother and next-of-kin, Jenny Cameron, the State is currently making payments for compensation for the damages suffered by her as a result of Mr. Gayle's death, and an apology was also provided. Further, the State informed the Commission that it retained reservations concerning the value of the second recommendation in Report N° 27/05 because, in the State's view, thorough and impartial investigations were carried out in Mr. Gayle's case and that the Director of Public Prosecutions determined that criminal charges should not be pursued. Finally, with respect to the third recommendation in Report N° 27/05, the State indicated that it continues to adopt various measures to prevent human rights violations including training the members of the security forces in international standards.

117. By note dated July 28, 2005, the Commission transmitted the State's response to the Petitioners with a request for a reply within 30 days. In a communication dated August 29, 2005, the Petitioners provided a reply to the State's response. In their submissions, the Petitioners indicated with respect to the Commission's first recommendation that, contrary to the State's observations, no apology has been given publicly or otherwise to the family of Michael Gayle. The Petitioners also indicated that even though Ms. Cameron decided to agree to a settlement of the civil suit in local courts, she did so because she believed that she did not have any other choice and is unsatisfied with the amount she received, namely JA\$1.9 million, or US \$34,000.00, after her attorney fees. With respect to the Commission's second recommendation,

the Petitioners reiterated their position that the State failed to fulfill its duty to investigate Michael Gayle's death as required under Article 4 of the American Convention and requested evidence of an impartial investigation carried out by the Government of Jamaica. Regarding the Commission's third recommendation, the Petitioners stated that human rights violations of the nature committed against Michael Gayle continue to occur in Jamaica because the State has failed to properly address the problem of extra-judicial killings. The Petitioners also indicated that according to their research, the Public Police Complaints Authority has not been strengthened, as it has only 14 investigators and suffers shortages in funds for expenses such as travel, stationary and functioning equipment. The Petitioners therefore requested evidence of the implementation of procedures and safeguards that have been put in place to prevent human rights violations, in accordance with international standards and requirements.

118. Upon reviewing the State's response to Report N° 27/05 and the Petitioners' reply to that response, the Commission wishes to make the following observations. First, as the Commission indicated in its report in this matter, it has commended the State's initiative in acknowledging the violations of Article 4 and 5 of the Convention in respect of Mr. Gayle. At the same time, the State's acknowledgement does not, in and of itself, constitute sufficient reparation for the serious nature of these violations and did not preclude the Commission from considering potential violations of other Convention provisions in this case, including Articles 8 and 25 of the Convention. With respect to the State's objection to the Commission's determination of violations of Article 8 of the Convention in respect of Mr. Gayle, the Commission considers that the reasoning for this violation is fully set out in paragraphs 76 to 102 of the present report and that no further comment is necessary. Concerning the State's indication that it has paid compensation and issued an apology to Mr. Gayle's next of kin, the Petitioners have indicated that an apology has not been given and that Mr. Gayle's next of kin are not satisfied with the compensation provided by the State. Consequently, the Commission considers that these aspects of its recommendations must be revisited between the parties. With respect to the statement that the State is providing training to members of its security forces in international standards, the Commission commends the state for this initiative and looks forward to receiving more information in this regard in future follow up procedures in this case. Finally, with regard to the State's reservations concerning the remaining conclusions and recommendations in the Commission's report, the Commission has decided to ratify its conclusions and reiterate its recommendations to the State and to evaluate compliance with the recommendations as part of the Commission's follow up procedures.

119. Based upon the foregoing considerations, and in light of the State's response to Report N° 27/05, the Commission, in conformity with Article 51(3) of the American Convention and Article 45(3) of its Rules of Procedure, decides to ratify the conclusions and reiterate the recommendations in this Report, to make this Report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the State of Jamaica with respect to the above recommendations until they have been complied with by Jamaica.

Done and signed in the city of Washington, D.C., on the 24th day of the month of October, 2005.  
(Signed): Clare K. Roberts, President; Susana Villarán de la Puente, First Vice-President; Paulo

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Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett Daher, Freddy Gutiérrez Trejo, and Florentín Meléndez, Commissioners.