

**REPORT Nº 104/09**  
PETITION 588-07  
ADMISSIBILITY  
PATRICK GENIUS & LEONIE MARSHALL  
JAMAICA  
October 30, 2009

**I. SUMMARY**

1. On May 11, 2007, the Inter-American Commission on Human Rights (the "IACHR" or the "Inter-American Commission") received a petition against the State of Jamaica ("Jamaica" or the "State") filed by Arturo Carrillo, director of the International Human Rights Clinic of the George Washington University Law School and Carolyn Gomes, Executive Director of Jamaicans for Justice, (the "petitioners") on behalf of Patrick Genius ("Mr. Genius" or the "alleged victim") and his mother, Leonie Marshall ("Ms. Marshall"). According to the petition, Mr. Genius was shot to death by Jamaican police officers on December 13, 1999, in circumstances which the petitioners allege amount to an extra-judicial execution.

2. The petitioners allege that the State failed to undertake an effective investigation into the circumstances of Mr. Genius' death and further failed to take steps to prosecute the police officers, in breach of Articles 4, 5, 13, 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the same instrument.

3. The State denies that it violated the rights of either Mr. Genius or his mother, contending that Patrick Genius was lawfully killed by the police officers, in exercise of their right to self-defense and that there was insufficient evidence to prosecute the police officers, as confirmed by the Jamaican courts. Finally, the State claims that the petition is inadmissible because domestic remedies were not exhausted as required by the American Convention.

4. As set forth in this report, having examined the contentions of the petitioners on the question of admissibility and without prejudging the merits of the matter, the Inter-American Commission concludes that the case is admissible, inasmuch as it meets the requirements provided in Articles 46 and 47 of the American Convention. Based on the foregoing, the IACHR decides to notify the parties of its decision and to continue with its analysis of the merits as regards alleged violation of Articles 1(1), 2, 4, 5, 13, 8 and 25 of the American Convention.

**II. PROCESSING BY THE INTER-AMERICAN COMMISSION**

5. The Inter-American Commission acknowledged receipt on May 15, 2007 and transmitted the pertinent parts to the State, requesting its observations thereon, within two months, by a communication dated October 11, 2007.

6. By note dated January 4, 2008, received on January 7, the State informed the IACHR that it was unable to submit its response in the time frame specified and requested an extension of thirty days to do so. On February 1, 2008, the IACHR received the State's response and acknowledged receipt thereof on February 13, 2008. On the same date, the Inter-American Commission transmitted the State's response to the petitioners, with a request that they provide their additional observations within one month.

7. The Inter-American Commission ultimately received additional observations from the petitioners on May 20, 2008, the pertinent parts of which were transmitted to the State on the same date with a request that it provide its observations thereon within one month.

8. By a communication dated June 20, 2008, the State requested a two-week extension to submit information. On October 14, 2008, the State transmitted its additional observations to the IACHR, which acknowledged receipt on December 19, 2008, and duly transmitted them to the petitioners on the

same date with a request that they submit their observations, if any, within one month.<sup>1</sup> On January 8, 2009 the petitioners requested an additional month to submit their observations, which were ultimately received at the IACHR on February 27 and transmitted to the State on August 11, 2009.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

9. The petition states that on December 13, 1999, Patrick Genius was fatally shot by three members of the Jamaican Constabulary Force (the "JCF"). According to the petition, the shooting occurred at Mona in the parish of Saint Andrew, Jamaica.

10. The petitioners challenge the State's claim that the police officers acted lawfully in killing Mr. Genius.<sup>2</sup> By way of background, the petitioners note the State's account of the events leading to Mr. Genius' death, as set out below:

- a) The policemen were following two individuals on a motorcycle, whom they suspected had participated in a robbery.
- b) While the two suspects were stopped on the side of the road, they saw the police approaching them, pulled handguns from their waists and fired shots in the direction of the policemen. One of the suspects escaped with the motorcycle. The other suspect, later identified as Patrick Genius, climbed a fence into the grounds of a school and ran across the playfield.
- c) The police tried to shoot him while he was climbing the fence and later pursued him across the field, shooting again in his direction. At one point, Patrick Genius was hiding in some bushes and shot at the policemen, who shot back. At the end of this shoot-out, Patrick Genius was shot in the head and fell on the ground, mortally injured.
- d) The policemen found documents on the body bearing the name of Patrick Genius, along with a set of keys. They subsequently searched Mr. Genius' home and found jewelry, three cellular phones and a silver pen, which had been reported as stolen property. The police officers also attempted to search Leonie Marshall's house, stating that they were looking for arms.

11. The petitioners reject this version of events, contending that Patrick Genius never posed a threat to the police officers, and that he was under their custody and control when he was fatally shot.<sup>3</sup> According to the petitioners, witnesses to the shooting state that Genius was detained by several plain clothes officers travelling in an unmarked police car and had his hands in the air before being shot in the

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<sup>1</sup> The Inter-American Commission indicates that on March 7, 2008, the IACHR held a thematic hearing on the use of lethal force by the Jamaican Police, in which the petitioners participated, as well as a State's representative, as an observer. The State presented a written response.

<sup>2</sup> The petition indicates that Amnesty International conducted an investigation into the death of Patrick Genius and several other victims of police brutality and produced a report supporting their claims: Amnesty Int'l, *Killings and Violence by Police, How many more victims?*, Apr.10, 2001, available at: <http://www.amnesty.org/en/library/info/AMR38/003/2001> ("AI Report 2001"); The petitioners also state and refer to the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, who made similar findings: U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, summary or arbitrary executions, *Addendum to the Report of the Special Rapporteur Asma Jahangir submitted pursuant to Commission on Human Rights Resolution 2003/53 (Mission to Jamaica)*, Doc. E/CN.4/2004/7/Add.2 (Sep. 26 2003) ("UN Report 2003").

<sup>3</sup> In support of this allegation, the petitioners also highlight several discrepancies in the testimonies offered by the three agents at the Coroner's Inquest (see paras.16-17 below) relating the events which preceded Patrick Genius' death, including, *inter alia*, the way in which they first approached the suspects and the distance between them, their position when the suspects first started shooting and the way in which the last exchange of fire with Genius occurred; *Leonie Marshall v. The Director of Public Prosecutions*, UKPC Appeal No.2 of 2006, Statement of facts and Issues, para.4(a) to (d) (the "JCPC Statement of facts").

head at close range.<sup>4</sup> The petitioners claim that the items recovered from Genius' home belonged to him and that both searches were carried out improperly and without a warrant.<sup>5</sup>

12. The petitioners allege that the police investigation into the death of Mr. Genius was belated, incomplete and deficient. Specifically, the petitioners allege that: the scene of the crime was not preserved; the agents responsible for the killing were the same responsible for gathering evidence; no witnesses were sought; no fingerprints were taken on the weapon allegedly found in possession of Mr. Genius; the gun allegedly used by Genius against police officers was only brought and registered as evidence the next day; and there has been no independent inspection or independent forensic examination in order to recover physical or testimonial evidence. The petitioners contend that these failures allowed the police officers to contaminate the evidence.

13. Moreover, the petition indicates that swabs were only taken from the hands of the police agents at 9PM and from the hands of Genius at 10PM on December 13, 1999. The petition states that as a result, no trace of gunshot residue was found on the swabs taken from the hands of any of the officers.<sup>6</sup> The petition further states that the forensic scientist nonetheless found gunshot residue on the swab from the palm of the right hand of Patrick Genius, but no residue on the swabs from the back of the hand, although the forensic scientist stated that one would expect an elevated level of residue to be deposited on the back of the firing hand. The petitioners also allege that the forensic scientist explained that cleaning hands or sweating can leave little or no trace of gunshot residue and added that the amount of residue found on the palm of Genius' hand could have also been transferred there by rubbing. The position of the petitioners is that Mr. Genius never had a gun, that he did not fire at the police officers and that the gunshot residue was in fact transferred on his hands by residue present on the police officers' hands.

14. The petitioners state that despite the request of Genius' family to be informed of the date and time of the autopsy, they were not informed in a timely manner, resulting in the inability to appoint an independent pathologist to witness the autopsy proceedings. The petition indicates that on December 30, 1999, a forensic pathologist appointed by the State conducted the post mortem examination of the body of Patrick Genius and found five gun shots on the body, all shot from behind.<sup>7</sup> The State's forensic pathologist found that the wounds were consistent with the scenario of a person running away from other persons and maybe turning his head when hit. He further attributed the death to the gunshot wound to the head.<sup>8</sup> The petitioners claim in contrast that the pattern of injuries described indicates the likelihood of a deliberate incapacitation followed by killing<sup>9</sup> and is in any case not consistent with the police officers' statement that Genius died as a result of the shoot-out that occurred, as none of the bullets were received on the front part of his body.

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<sup>4</sup> The petitioners refer to the investigation conducted by Amnesty International, 2001 AI Report, p. 17-18.

<sup>5</sup> AI Report 2001, para.18; the petitioners also highlight the fact that at the Coroner's Inquest, one of the police officers who participated in the killing of Genius testified that at 10 pm, they conducted the search of Genius' house. However, a certain Inspector Handel Morgan deposed that he was on duty at about 7:30 pm on December 13, 1999, when he searched Genius' house along with other police officers; JCPC Statement of facts, para.4(d) and (e).

<sup>6</sup> The forensic scientist testified at the Coroner's Inquest, see para.16 below; and *Leonie Marshall v. The Director of Public Prosecutions*, [2007] UKPC 4, Reason for Decision of the Lords of the Judicial Committee of the Privy Council, para.5 (the "JCPC 2007 Decision").

<sup>7</sup> Allegedly, three of them were shot from behind and the other two from behind at an angle. The pathologist also noted that two of the bullets lodged in the skull had downward trajectories, but that the skull bone, "being a rigid structure, can change the trajectory and speed of a bullet which has struck it"; the petitioners refer to the JCPC 2007 Decision, para.4.

<sup>8</sup> Allegedly, the forensic pathologist testified at the Coroner's Inquest that subsequently took place in April and May 2001, see paras. 16-17 below; JCPC 2007 Decision, para. 4.

<sup>9</sup> The petition indicates that Amnesty International consulted an independent pathologist who found the autopsy report wanting and opined that, contrary to its findings, the pattern of injuries described indicates the likelihood of deliberate incapacitation followed by killing.

15. The petition indicates that the Bureau of Special Investigations (“BSI”) was charged with investigating the matter on December 20, 1999 but that in fact, police investigators did not initiate an investigation until five months after the shooting took place, when statements were requested from family members.<sup>10</sup> The BSI sent the file to the Director of Public Prosecution (“DPP”) on February 24, 2000, which ruled on March 3, 2000 that the matter should be examined by a Coroner’s Inquest.<sup>11</sup>

16. The Coroner’s Inquest took place in April and May 2001 and the petition indicates that Ms. Marshall attended each day of the sitting. On May 29, 2001, after nine sittings, the jury allegedly found that persons were criminally responsible for the death of Patrick Genius but the Coroner prevented the jury from naming specific individuals.<sup>12</sup> The petitioners submit that because no names were called by the jury in their verdict, the Coroner did not charge the three police officers responsible for the killing. Instead, the matter was referred back to the DPP for further consideration.

17. Ms. Marshall subsequently learned, on January 9, 2002, on a radio talk show, that the DPP had decided not to prosecute the policemen allegedly responsible for the death of her son. When asked if he had informed the mother of Patrick Genius, the DPP responded that he doesn’t “even know who was the mother because that didn’t in fact cross my mind in relation to ruling on the file.”<sup>13</sup> In light of this information, the petitioners state that on February 1, 2002, Ms. Marshall wrote to the DPP requesting documents related to the proceedings in her son’s case.<sup>14</sup> According to the petition, she never received a response or any documents.

18. The petition indicates that Ms. Marshall sought to quash the DPP’s decision not to prosecute the police officers by way of judicial review proceedings, but was ultimately unsuccessful. The basis of her claim was that there was sufficient material in the inquest depositions to throw doubt on the veracity of the officers’ evidence and create a *prima facie* case that they were not acting in self-defense as they had averred.<sup>15</sup> A chronology of those proceedings is particularized hereunder:

- a. Request for leave to apply for judicial review of the DPP’s decision before the Supreme Court, filed on March 18, 2002: denied on procedural grounds;
- b. Renewed request for leave to apply for judicial review: leave for judicial review of the DPP’s decision granted and all other grounds denied on October 31, 2002;<sup>16</sup>

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<sup>10</sup> AI Report 2001, at 18.

<sup>11</sup> Pursuant to the Coroner’s Act (12<sup>th</sup> June 1900) [Act 6 of 2005], Annex F. § 6 (Eng.), any violent or unnatural death is investigated by the corresponding coroner, a local magistrate, to determine the cause of death and the existence of potential criminal liability. The petitioners submit that in Kingston, there is one coroner to oversee all such inquests, who summons five jurors to a hearing and which, after hearing the evidence, issue a verdict setting forth who the deceased was, the manner in which he/she dies and if it appears that the crime of murder or manslaughter was committed, the persons whom the jury charges with such crimes.

<sup>12</sup> According to the petition, the Coroner’s jury returned a verdict stating that Patrick Genius died “as a result of gunshot wounds to the head and do further say that person or persons criminally responsible” at which point the coroner interrupted the jurors and instructed them specifically not to call any names; Judgment of the Full Court (Wolfe CJ, Beckford & Marsh JJ), *In the Matter Touching and Concerning the death of Patrick Genius and... the Coroner’s Act and... the Office of the Director of Public Prosecutions*, Suit No. 2002/M-35, Supreme Court of Jamaica (Oct. 31, 2002), Record of Proceedings in the JCPC, at 98 (the “JCPC Record of Proceedings”); and Corrected Affidavit of Leonie Marshall in Support of Application (Mar. 22, 2002), JCPC Record of Proceedings, at 6-7.

<sup>13</sup> Transcript of Radio Interview by Ruth-Ann Wynter and Patrick Bailey with Kent Pantry, Director of Public Prosecutions, Drive Time Live, HOT 102 FM, in Kingston, Jamaica (Jan. 9 2002), Record of Proceedings, at 9-15; Letter from David G. Batts, Attorney Representing Ms. Leonie Marshall, to the Director of Public Prosecutions (Feb.1 2002), JCPC Record of Proceedings, at 14-15.

<sup>14</sup> JCPC Record of Proceedings, at 49.

<sup>15</sup> JCPC 2007 Decision, para. 9.

<sup>16</sup> The petitioners submit that requests for review of the Coroner’s failure to charge the policemen, the Coroner’s decision to refer the matter to the DPP, and the decision of the DPP not to disclose to Ms. Marshall his reasons for not initiating proceedings were all denied; the petitioners submit that a request for exhumation of the body of Patrick Genius to retrieve the bullet or bullets lodged therein was also denied; October 31, 2002 Supreme Court Judgment, paras. 98-100.

- c. Application for Judicial Review in the Supreme Court of Jamaica: heard and dismissed in April and May 2003;<sup>17</sup>
- d. Notice of Ground of Appeals filed on May 21, 2003 before the Court of Appeal: granted;
- e. Appeal before the Court of Appeal of Jamaica, filed on October 13, 2004: dismissed on March 18, 2005;<sup>18</sup>
- f. Leave to appeal before the Court of Appeal: granted on May 16, 2005; and
- g. Appeal dismissed by the Judicial Committee of the Privy Council ("JCPC") on November 22, 2006, delivered on January 24, 2007.

19. In dismissing Ms. Marshall's appeal, the petitioners submit that the JCPC affirmed that the position and functions of the DPP under the Jamaican Constitution are such that judicial review of his decisions is a "highly exceptional remedy" although it is available in principle; and that because the DPP's decision was not inexplicable or aberrant, there was no need to provide further explanations to justify his decision not to prosecute the police officers. The petition indicates that the JCPC concluded that the statement of the DPP that there was not sufficient evidence in law to charge anyone did not require further explanation.<sup>19</sup> The JCPC referred to a previous judgment in which it ruled that: "It is sufficient, in our opinion, in cases involving the exercise of prosecutorial discretion to apply established principles of judicial review. These would have proper regard to the great width of the DPP's discretion and the polycentric policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits."<sup>20</sup>

20. With regards to admissibility, the petitioners argue that an effective remedy in the present case must include investigation, prosecution and punishment of those responsible for the alleged human rights violations and that judicial review of the DPP's decision represented the only means of challenging the failure to investigate, prosecute and punish the alleged perpetrators of Patrick Genius' death. Accordingly, the petitioners submit that the dismissal of the appeal to the JCPC denotes the exhaustion of available and effective domestic remedies. The petitioners refer to jurisprudence of the inter-American system indicating that the international obligation of states to compensate victims of human rights violation committed by their agents must be accompanied by efforts to prevent, investigate and punish any such violations in order to properly remedy the damages caused.<sup>21</sup> Consequently, they contend that the filing of a constitutional motion, as suggested by the State, would only provide an award of monetary compensation, which according to them is not sufficient remedy for the breaches of Mr. Genius and Ms. Marshall's rights.

21. The petitioners provide similar arguments with respect to the pursuit of a civil claim in respect of Mr. Genius's death. They assert that the primary cause of Ms. Marshall's suffering is the systemic denial of justice for the unlawful killing of her son by the Jamaican authorities and that

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<sup>17</sup> Judgment of the Full Court on Judicial Review (Reid, Harrison & D.O. McIntosh, JJ), *In the Matter Touching and Concerning the death of Patrick Genius and...the Coroner's Act and...the Office of the Director of Public Prosecutions*, Suit No. 2002/M-35, Supreme Court of Jamaica (May 2003), Record of Proceedings in the JCPC, at 124 (the "May 2003 Supreme Court Judgment").

<sup>18</sup> Decision of the Court of Appeal of Jamaica (Forte P., Smith JA, McCalla JA (Ag.)), *In the Matter Touching and Concerning the death of Patrick Genius and ... the Coroner's Act and... the Office of the Director of Public Prosecutions*, Supreme Court Civil Appeal No: 39/2003 (Mar. 18, 2005), Record of Proceedings in the JCPC, at 185.

<sup>19</sup> JCPC 2007 Decision, paras. 15-19.

<sup>20</sup> *Mohit v. The Director of Public Prosecutions of Mauritius*, [2006] UKPC 20.

<sup>21</sup> IACHR Report N° 8/03, Case 12.418, Admissibility, Michael Gayle (Jamaica) February 20, 2003 (the "Michael Gayle Admissibility Decision").

accordingly, a monetary compensation is not an adequate or effective remedy for the violations of Articles 4, 5, 8, 13 and 25 of the American Convention.

22. The petitioners submit that the petition filed on May 11, 2007, was filed in a timely manner and that the matter contained therein is not pending before any other similar international organization or human rights body.

23. With respect to the substance of their complaints, the petitioners claim that the State is responsible for violating Mr. Genius and Mr. Marshall's rights in four interrelated ways.

24. Firstly, the petitioners argue that Jamaica is responsible for violating Mr. Genius' right to life under Article 4 of the American Convention because he was the victim of an extrajudicial execution by state agents; and due to the failure of the State to properly investigate, prosecute and punish the perpetrators.<sup>22</sup>

25. Secondly, they argue that the State is responsible for violating the right to humane treatment of Mr. Genius and Ms. Marshall under Article 5 of the American Convention. With regard to Patrick Genius, it is alleged that he suffered inhuman treatment prior to his death, since he was allegedly injured, incapacitated and conscious at the time of his killing.<sup>23</sup> The petitioners refer to the Inter-American Court which recognized that moral harm in the form of pain and suffering inflicted on victims of summary executions by state agents prior to their death will constitute a distinct violation of Article 5 of the American Convention.

26. With regard to Ms. Marshall, the petitioners argue that she has been subject to cruel, inhumane and degrading treatment due to, *inter alia*: the abuse committed against her son; the search of her house by the same police agents who executed her son, without her permission; the failure of the DPP to prosecute her son's killers despite evidence of criminal responsibility; as well as the delay and constant abuse inflicted by the Jamaican judiciary authorities.<sup>24</sup> The petitioners refer to the Inter-American Court, which established that the next of kin may themselves become victims of violation under the American Convention in their own right as a result of the suffering they endure due to the abuses committed against their loved ones and the subsequent conduct of the State in response to the initial violations.

27. Thirdly, the petitioners claim that the State violated Articles 8 and 25 of the American Convention because it failed to conduct a thorough, prompt and impartial investigation into the circumstances of Patrick Genius' death and to bring to justice the three police officers purportedly responsible.

28. Fourthly, with respect to Article 13, the petitioners allege having requested certain information about the investigation without being able to obtain it. They allege more generally that in not providing effective judicial remedies or due process of law to Ms. Marshall, in supporting the DPP's decision not to prosecute and learn the truth about the circumstances of Patrick Genius' death and in

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<sup>22</sup> The petitioners refer to the concern expressed by the IACHR on the "pattern... identified in Jamaica [of] a disproportionately large number of killings (...) associated with the State's security forces", IACHR Report N°92/05, Case 12.418, Merits, Michael Gayle (Jamaica) October 24, 2004 (the Michael Gayle Merits Decision"), at para. 88; they also refer to the Inter-American Court which held that "the conditions are established for the repetition of these offences within an environment of impunity, which is contrary to the duty to respect and guarantee the right to life", I/A Court H.R., *Baldeon García v Peru Case*. Judgment of April 6, 2006. Series C N° 147, para. 91.

<sup>23</sup> I/A Court H.R., *Castillo Páez v. Peru Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 86.

<sup>24</sup> As such, the petitioners mention that Leonie Marshall was accused of pursuing a frivolous action and ordered to pay the costs of litigation to the DPP by the lower court and the Privy Council.

failing to grant access to the information concerning Genius' death in possession of the DPP to Ms. Marshall, the State violated its obligation to ensure that the right to truth is respected.<sup>25</sup>

29. Finally, the petitioners claim that the State violated its obligations under Articles 1(1) and 2 of the American Convention, in that it failed to adopt the necessary measures to prevent the unlawful police killing of Patrick Genius that led to the violations of Article 4 and 5 of the American Convention; and failed to provide judicial remedies and due process in accordance with its obligations under Article 8 and 25 of the same instrument.

30. In support of their position, the petitioners assert that the killing of Mr. Genius is not an isolated incident, but part of a widespread pattern of extrajudicial executions by police, which have well been documented by international organizations, international and national human rights NGOs and the State itself.<sup>26</sup> They submit that there is almost complete impunity for unlawful killings by State agents in Jamaica, resulting in a palpable disillusionment of the Jamaican people with the criminal justice system.<sup>27</sup> According to the petitioners, the impunity surrounding extrajudicial killings by police is due to a certain number of factors, including the absence of a truly independent and effective body to investigate police killings, the facts that incidents are not investigated promptly, impartially and thoroughly and the fact that the Jamaican authorities fail to protect witnesses of police shootings to preserve or encourage their testimony for trial.

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<sup>25</sup> The petitioners make reference to the IACHR's holding that "Article 13 protects the right of access to information"; IACHR Report N°136/99, Case 10.488, *Ellacuría et al.* (El Salvador), December 22, 1999, paras. 221-232.

<sup>26</sup> The petitioners refer to U.N. Commission on Human Rights, Special Rapporteur on Extrajudicial, summary or arbitrary executions, *Addendum to the Report of the Special Rapporteur Philip Alston (Follow-Up to Country Recommendations)*, Doc. E/CN.4/2006/53/Add.2 (Feb 28, 2006); to the IACHR, which recognized that, *inter alia*: "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", Michael Gayle Merits Decision, para. 88; and to Amnesty Int'l, *Annual Report 2006 (Jamaica)*; AI Report 2001; Press Release, Human Rights Watch, *Jamaica: Investigate Police and Military Killings*, Jul. 12, 2001; and Jamaicans for Justice, *Pattern of Impunity: A Report on Jamaica's Investigation and Prosecution of Deaths At the Hands of Agents of the State*, September 30, 2005.

<sup>27</sup> UN Report 2003, para. 75.

## B. The State

31. The State argues that the petition is inadmissible because: the petitioners failed to exhaust domestic remedies; the facts contained in the petition do not tend to establish violations of the American Convention; and the petition is manifestly groundless.<sup>28</sup>

32. The State argues that the domestic remedies are not limited only to criminal ones and that Ms. Marshall could have sought civil redress; she could have pursued a civil claim for wrongful death in relation to the death of her son; and/or she could have pursued civil redress for trespass in relation to the search of her home. The State relies on the *Ramona Africa Case*, where the Inter-American Commission held a petition inadmissible because the petitioner failed to exhaust available civil domestic remedies, although criminal charges were not brought against the alleged responsible State agents.<sup>29</sup> Further the State contends that the European Court on Human Rights has held that “[t]he possibility of obtaining compensation for the death of a person will generally, and in normal circumstances, constitute an adequate and sufficient remedy for a substantive complaint of an unjustified use of lethal force by a State agent”<sup>30</sup> The State claims that Ms. Marshall’s failure to seek such civil redress in a timely way should lead to a finding of non-exhaustion.<sup>31</sup>

33. With regard to the merits of the complaints, the State claims that the allegations comprised in the petition do not establish a violation to the right to life. The State argues that the domestic courts have found that Patrick Genius was lawfully killed during a police operation, and therefore not arbitrarily deprived of his life. In this regard, the State recalls that a gun was found next to Genius with spent shells and that there was gunpowder residue on his hands.

34. Concerning the alleged violation of the right to humane treatment, the State contends that the facts presented at no point establish that Mr. Genius was incapacitated before being killed. The State submits that, in contrast, the statements of the forensic pathologist who examined Genius are consistent with the police account that Mr. Genius died in the course of a shoot-out. Concerning Ms. Marshall, the State submits that the many domestic remedies available to obtain compensation were not exhausted, such as a constitutional motion<sup>32</sup> and civil redress. With regard to the search of Mr. Genius’s house, the State submits that Ms. Marshall could have filed a civil action to seek recovery of the items seized during the search of the house and/or compensation where recovery of these items was not possible.

35. In response to the allegations of violation to the right to a fair trial and judicial protection, the State submits that it has investigated the shooting death of Mr. Genius, including the holding of a Coroner’s inquest. The State acknowledges that it has a duty to investigate and punish any violation of the rights set forth under the American Convention; however, it stresses that this duty to punish must be dependent upon whether the evidence available supports the allegation that a violation has been committed. In the present case, the State argues that the only evidence on the record is a credible claim for self-defense, ruling which was upheld by the JCPC. Moreover, the State submits that the alleged evidence of eyewitnesses contradicting the police officers’ account of the events was never introduced at any stage of the domestic proceedings.

36. The State further submits that neither the alleged victims nor the Jamaican people have been denied access to information or to know the truth. According to the State, the petitioners are the ones reluctant to accept the truth as revealed by the evidence. Moreover, the State contends that the

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<sup>28</sup> Respectively, under Articles 46, 47(b) and 47(c) of the American Convention.

<sup>29</sup> IACHR Report No. 19/92, Case 10.865, *Ramona Africa* (United States), October 1, 1992, (“*Ramona Africa Case*”), Analysis para. 6.

<sup>30</sup> The State refers to *Jordan v. United Kingdom* (2003), EHRR 2; *Caraher v. United Kingdom* No. 24520/94, January 11, 2000; *Donnelly and others v. United Kingdom*, December 15, 1975.

<sup>31</sup> The State refers to *Cardot v. France* (1991) 13 E.H.R.R. 853.

<sup>32</sup> The State refers to Constitution of Jamaica, § 17.



petitioners could have filed a constitutional motion alleging violation of the “right to know truth,” arising from rights protected under the Jamaican Constitution.<sup>33</sup>

37. The State finally argues that the claims pertaining to Articles 1(1) and 2 of the American Convention are manifestly groundless and obviously out of order, and should be rejected by the Inter-American Commission. Although it acknowledges that extra-judicial killings have become a feature of the Jamaican landscape,<sup>34</sup> the State claims that it has committed itself to various policy and legislative initiatives designed to prevent the occurrence of such killings or, in the alternative, to hold accountable and punish the agents of the State found responsible. In particular, the State submits that it is taking steps to enact legislation establishing an independent commission, mandated to be independent and impartial, to investigate abuses and excesses committed by security forces and State agents. The State also mentions several bills currently under study by the Parliament and which aim at investigating instances where death occurs at the hands of the security forces or agents of the State.<sup>35</sup> Moreover, the State submits that comprehensive steps are being taken to train police officers in human rights as well as crime scene management.

#### IV. ANALYSIS

##### A. Competence of the Inter-American Commission *ratione personae, ratione loci, ratione temporis, and ratione materiae*

38. The Inter-American Commission finds that the petitioners have *locus standi* to submit petitions, in accordance with Article 44 of the American Convention. The petition identifies as the alleged victims Mr. Patrick Genius and Ms. Leonie Marshall, two individuals, whose rights under the American Convention the State of Jamaica is committed to respect and ensure. The IACHR further notes that Jamaica is a State party to the American Convention, having ratified it on August 7, 1978. The IACHR therefore has competence *ratione personae* to study the petition.

39. The Inter-American Commission has competence *ratione loci* to take cognizance of this petition since the alleged events purportedly occurred in the territory of a Jamaica, a State party. It also has competence *ratione temporis*, since the alleged events took place at a time when the duty to respect and ensure the rights enshrined in the American Convention was in force for Jamaica. Finally, the IACHR has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

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<sup>33</sup> Constitution of Jamaica, §§ 20, 22 and 25.

<sup>34</sup> Written response provided by the State during the hearings held on March 7, 2008.

<sup>35</sup> The State mentions, *inter alia*: a Special Prosecutor’s Bill intended to address issues of corruption by officials of the State, which will empower a Special Prosecutor responsible for the investigation and prosecution of corruption in the public and private sector; a Special Coroner’s Bill which will appoint Special Coroners to sit island wide and conduct inquests in cases where death occurs at the hands of the security forces or State agents; and legislation proposed to protect persons who provide information on instances of corruption.

## **B. Other admissibility requirements**

### **1. Exhaustion of domestic remedies**

40. The Inter-American Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law, pursuant to Article 46(1)(a) of the American Convention.

41. As mentioned in previous jurisprudence, in determining whether the petitioners' claims should be considered inadmissible for failure to exhaust domestic remedies, the Inter-American Commission refers to the fundamental principles governing the nature of the remedies that must be exhausted in the inter-American system, namely those remedies that are both adequate, in that they are suitable to address an infringement of a legal right, as well as effective, in that they are capable of producing the result for which they are designed.<sup>36</sup> Where the situation complained about may constitute a crime requiring investigation *de officio*, as is alleged in this case, the appropriate remedy would normally be a criminal investigation brought forward by the State.

42. In the present case, the petition involves the alleged violation of the right to life, which under domestic law is an offense that should be prosecuted by the State on its own initiative. Therefore, and as mentioned in previous jurisprudence, it is this process, initiated and pursued by the State, which should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages.<sup>37</sup> The IACHR considers that the remedies suggested by the State would not redress the alleged violations resulting from the State's decision not to prosecute the police officers.

43. In this regard, the record before the Inter-American Commission indicates that the State undertook some procedures for investigating Mr. Genius's death, including a Coroner's Inquest and an investigation by the BSI. The petitioners claim, however, that the investigations were deficient and that, due to the insufficiency of the investigation, the DPP ultimately declined to pursue charges against those allegedly responsible for Patrick Genius's death.

44. The record also indicates that Ms. Marshall sought judicial review of the DPP's decision not to prosecute the police officers allegedly responsible for the death of her son and that the domestic courts, including the JCPC, all rejected those requests.

45. Ms. Marshall took the steps available to challenge the decision not to prosecute, but the central claims raised go to alleged deficiencies in the investigation process itself, including that the officers involved in the shooting reportedly participated in certain measures carried out. There has been no suggestion of other remedies available to challenge those alleged deficiencies.

46. The Inter-American Commission thus considers that the petitioners have no further domestic remedies to exhaust and finds no bar to the admissibility of the petition under Article 46(1)(a) of the American Convention.

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<sup>36</sup> Michael Gayle Admissibility Decision, para. 39 and I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C N° 4 (1988), paras. 63-66; see also I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, August 10, 1990, Ser. A N° 11 (1990), paras. 34, 36.

<sup>37</sup> See Michael Gayle Admissibility Decision, para.41; and IACHR Report N° 87/08, Petition 558-05, Admissibility, Jeremy Smith (Jamaica), October 30, 2008, paras. 34 *et ss*.

## **2. Timeliness of the petition**

47. In accordance with Article 46(1)(b) of the American Convention, a petition must be presented in a timely manner, namely within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The decision of the JCPC denying the granting of judicial review of the decision of the DPP is dated November 22, 2006, and was delivered on January 24, 2007. Accordingly, since the petition was presented on May 11, 2007, the IACHR considers that it is not barred from consideration under Article 46(1)(b) of the American Convention.

## **3. Duplication of proceedings**

48. Article 46(1)(c) of the American Convention provides that admissibility of a petition by the Inter-American Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(1)(d) also stipulates that the IACHR shall declare inadmissible any petition that is substantially the same as one previously studied by the IACHR or by another international organization. From the documents in the file, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the IACHR or by another international organization and the State did not oppose the admissibility of the petition on this ground either. The IACHR therefore considers that the requirements for admissibility have been met.

## **4. Colorable claim**

49. Articles 47(b) and 47(c) of the American Convention require the Inter-American Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention, or if the statements of the petitioners or of the State indicate that the petition is manifestly groundless or obviously out of order. The standard by which to assess these extremes is distinct from that applied when deciding upon the merits of a petition. The IACHR must undertake a *prima facie* evaluation, not for the purpose of establishing the existence of a violation, but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the American Convention.

50. The petitioners allege that the State is responsible for the violation of Articles 4, 5, 13, 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the same instrument, in relation to the death of Patrick Genius.

51. Based upon the information provided by the parties, and without prejudging the merits of the matter, the Inter-American Commission finds that the petition contains factual allegations that, if proved, tend to establish violations of the Mr. Genius's right to life and the right of Mr. Genius and Ms. Marshall to humane treatment, to information, to fair trial and judicial protection, (under respectively Articles 4, 5, 13, 8 and 25 of the American Convention), in conjunction with the general obligations to respect the rights recognized in the American Convention and to adopt legislative or other measures to give effect to those rights (under Articles 1(1) and 2 of the American Convention). The IACHR thus finds that the statements of the petitioners are not manifestly groundless or obviously out of order and consequently, the petition is not barred as inadmissible under Articles 47(b) or 47(c) of the American Convention.

## **V. CONCLUSIONS**

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

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

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

**DECIDES TO:**

1. Declare the present petition admissible with respect to Articles 4, 5, 8, 13 and 25 of the American Convention in conjunction with Articles 1(1) and 2 of the same instrument;
2. Notify the parties of this decision;
3. Continue with the analysis of the merits of the case; and
4. Publish this Report and include it in the Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 30<sup>th</sup> day of the month of October, 2009.  
(Signed): Luz Patricia Mejía, President; Victor E. Abramovich, First Vice-Chairman; Felipe González, Second Vice-Chairman; Paulo Sergio Pinheiro, Sir Clare K. Roberts and Paolo G. Carozza, Commissioners.