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REPORT No. 353/20
PETITION 2186-13
REPORT ON ADMISSIBILITY

LANCE ZAB AND FAMILY
JAMAICA

Approved electronically by the Commission on November 24, 2020.

Cite as: IACHR, Report No. 353/20, Petition 2186-13. Admissibility. Lance Zab and family.
Jamaica. November 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Center - Loyola Law School (IHRC) and Jamaicans For Justice
Alleged victim:	Lance Zab and family
Respondent State:	Jamaica ¹
Rights invoked:	Articles 4 (right to life), 5 (humane treatment), 8 (fair trial), 25 (judicial protection), 19 (right of the child) of the American Convention on Human Rights ² , all in relation to articles 1.1 (obligation to respect rights), and 2 (domestic legal effect) of the same instrument

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 19, 2013
Notification of the petition to the State:	December 7, 2018
State's first response:	April 8, 2019
Additional observations from the petitioner:	April 18, November 12, 2019 and May 5, 2020
Additional observations from the State:	August 12, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (ratification of the American Convention August 7, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (right of the child), and 25 (judicial protection) of the American Convention in relation to articles 1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Exception set forth in Article 46.2(a) and (c) of the Convention applies
Timeliness of the petition:	Yes, in terms of Section VI

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Margarette May Macaulay, a Jamaican national, did not participate in the deliberations or decision in this matter.

² Hereinafter "the American Convention" or "the Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners denounce the extrajudicial execution of alleged victim Lance Zab, a 14-year-old boy who was shot and killed, without justification, by members of the Jamaican police on August 28, 2007 near his home in Kingston. The petitioners also argue the failure of the State to carry out a proper, timely and diligent investigation into the killing of the alleged victim; to prosecute those responsible; and to provide adequate reparations to his family. They allege a widespread pattern of extrajudicial executions by security force members in Jamaica and structural defects in the criminal investigation of these crimes, resulting in virtually absolute impunity.

2. The petitioners indicate that the alleged victim was a homeless student at Seaward All-Age and Junior High School whose mother had died when he was nine months old. His grandmother cared for him after his mother's death, but at the time of his extrajudicial execution, he lived alone in a room made of pallet pieces, which measured approximately four-feet wide to four-feet high. On the wall of the structure, he posted pictures of musician Bob Marley and a plaque bearing a tribute to his mother. According to the petitioners, the community regarded the alleged victim as a quiet boy who caused no trouble, and his death was a shock to them⁴. The petitioners submit that contrary to eyewitness accounts, police officers held that the alleged victim was killed during a shootout with gunmen who managed to escape. The alleged victim was purportedly among the group of gunmen, and was later discovered with gunshot wounds to his upper body.

3. While officers claim to have found a gun belonging to the alleged victim on the scene of the shootout, residents of the community refute the police account. Other eyewitnesses indicate that on the afternoon of August 28, 2007, the alleged victim was standing in a yard with a friend eating cornbread and drinking juice when at least four police officers from a neighboring station in Bayside drove up; his friend ran away, but the alleged victim stayed behind. While two of the officers held the gate to the yard, the others ran directly toward the alleged victim and shot him. The child fell to the ground in pain and cried pleading for his life: "A no mi, please don't kill me." Despite his begging, the officers dragged him to the road and leaned him against a car. They then shot the boy twice, then lifted him by the throat and fired a final shot to his head. Soon, an agitated crowd gathered around the scene of the shooting and the police officers fired shots to disperse them. The alleged victim's aunt was among those unable to reach the scene because of the officers' shots. The four officers then picked the spent shells up from the ground and removed the body from the scene of the killing. The alleged victim was later pronounced dead at the Spanish Town Hospital. After the officers took his body away, the alleged victim's cousin collected pieces of the boy's skull and brain tissue and buried them. The cousin also reported that he provided pieces of the alleged victim's shattered skull to the Bureau of Special Investigation (BSI)⁵. The petitioners emphasize that Jamaican security agents have a practice of treating shooting victims inhumanely and removing the bodies before an investigatory team arrives; tossing or throwing them in the back of police vehicles; and routinely refusing to give families information about the location to which the bodies of their loved ones are being taken. The petitioners consider that the rough, irreverent manner in which the police handled the alleged victim's body caused additional suffering, which amounts to cruel, inhumane and degrading treatment, and exacerbates the suffering and abuse of his next of kin.

4. With regard to the investigation, the petitioners assert that the State has failed to conduct a proper and diligent investigation. On September 27, 2007 a full month after the extrajudicial, an autopsy of the alleged victim was conducted at the Spanish Town Hospital Morgue. They further submit that the autopsy lasted only 38 minutes; that the signature of the officer who performed that autopsy is illegible; that there is no information about the position the officer held at the time; and that entire pages of the post mortem report are left blank, leaving out information such as whether and what forensic tests were taken and which crime scene data was available. The post mortem report indicates that the alleged victim was severely bruised and

⁴ Carlalee Gowie, *Residents outraged over police killing of teenager*. Sunday Herald, September 9, 2007.

⁵ The petitioners inform that the alleged victim's cousin, a potential witness in the case, declined to be identified for fear of his life.

bloody at the time of his death; there were multiple complex, compound fractures to his skull, and a large five by ten centimeter wide cavity near the top of his head. The report also states that little brain tissue was left in his skull, though some of it was on his hair and face; it shows multiple gunshot wounds in his chest and arms in addition to the wounds to his head; it also mentions that his face, eyes and lips were swollen and that he had large abrasions and bruises on his shins and back. The petitioners consider that these injuries are all consistent with the eyewitness accounts of the police shooting and hitting the alleged victim multiple times, then beating and dragging him before fatally shooting him in the head. At the time, no information was provided with regard to the use of the body parts his cousin provided to the BSI. The petitioners indicate that they repeatedly requested information regarding the investigation but that they received no response.

5. The petitioners further inform that on January 15, 2010 the BSI referred the case to the Department of Public Prosecutions (DPP). From February 9, 2011 to October 5, 2012, the petitioners requested information about the status of the case at least six times. The only response received from the DPP Director was that matters were being processed and that they would be contacted as soon as the exercise was completed.

6. Additionally, the petitioners point to a widespread pattern of extrajudicial executions in Jamaica and structural defects in the respective criminal investigations, which results in virtually absolute impunity.⁶ They further denounce the use of tactics such as intimidation of witnesses, premature moving of bodies and loss or interference with vital forensic and ballistic evidences after a shooting as some of the causes for the delay and obstruction of investigations and proceedings. They argue that the failure of the State to investigate, prosecute and punish these crimes is the result of a judicial system that operates together to shield police from accountability, leading to an injustice. As was illustrated in the prior paragraphs, the petitioners deem that such defects have been present in the instant case from the very beginning, as the Jamaican security forces removed evidence from the crime scene; made false statements about the events surrounding the alleged victim's death; and unduly delayed the investigation into the events. The petitioners consider that the fact that the matter is still pending in the courts of Jamaica constitutes sufficient evidence that there has been no reasonable progress in this case.

7. For its part, the State contends that the petition is inadmissible because domestic remedies have not been exhausted in accordance with Article 46(1)(a) of the American Convention and that the petitioners have not established *prima facie* violations of that treaty. The State specifically alleges that the petitioners have not exhausted civil proceedings in Jamaica in the form of constitutional relief, which provides the possibility of compensation for any harm caused by alleged human rights violations, including violations the right to life and the right not to be subjected to cruel and inhumane treatment. The State invites the Commission to depart from its previously held position that civil remedies are inadequate or ineffective for alleged breaches of non-derogable rights⁷ and submits that the petitioner regardless of the criminal proceedings must pursue these. The State contends that civil remedies adequately address alleged human rights violations as they allow for the facts to be ventilated by assessing the State's responsibility for human rights violations; and that they may provide for compensation, including for exemplary damages, which is an adequate form of relief. Jamaica further argues that by the very nature of the criminal process, the responsibility of the State cannot be properly established since, in fact, the purpose is to hold individuals responsible for offenses. In addition, they cannot provide or facilitate the delivery of compensation. The State submits that civil proceedings are effective as they adhere to the principles of due process, including safeguards for judicial independence and impartiality. Accordingly, it considers that no exception set forth in the American Convention applies to this case, because domestic remedies are still available and accessible to the petitioners, including those aimed at ensuring due process in the investigations and judicial proceedings.

8. Furthermore, the State contends that the allegation regarding the failure to adequately investigate and prosecute this matter is manifestly groundless. Jamaica submits that any such claim cannot be

⁶ The petitioners refer notably to a IACHR press release, Inter-Am. Commission H.R., Press Release No. 59/08, *IACHR Issues Preliminary Observations on Visit to Jamaica* (Dec. 5, 2008).

⁷ The State refers to the following report: IACHR, *Michael Gayle v. Jamaica*, Admissibility Report No. 8/03, Inter-Am. Comm'n H.R., Petition 191/02, (Feb. 20, 2003).

examined unless local remedies have been exhausted, which the petitioners have failed to do. The State considers that the petitioners' argument regarding the inadequacy of Constitutional relief is incorrect, since this remedy provides the ability to receive any appropriate form of relief for an established human rights violation, which includes, but is not limited to, compensation. The State underscores that Constitutional relief may offers as a form of reparation, the possibility of ordering State agents to fulfil the duty to investigate, where there is any breach; and it offers the prospect of the Constitutional Court issuing a judicial declaration on the State's responsibility for human rights violations, which is itself a form of relief recognized by the Commission. Hence, the State submits that the petitioners must apply to the Supreme Court for constitutional relief, to allow for judicial review of compliance with the duty to investigate.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioners allege that the State failed to carry out a proper, timely and diligent investigation and prosecution into the crime, which left it in impunity; and that it failed to provide adequate reparations to the family of the alleged victim. They also argue that the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(c) is applicable to this matter, and also that civil proceedings need not be exhausted in the case of an alleged violation of the right to life, because it is not an adequate remedy for an extra-judicial killing case. For its part, the State submits that the petitioners have not fulfilled their obligation to exhaust domestic remedies and that the petition is thus inadmissible; it further submits that civil proceedings are an adequate and effective remedy that must be pursued by the petitioners regardless of whether the State has failed to adequately pursue criminal proceedings.

10. With respect to the lack of exhaustion argument, the IACHR recalls that whenever an alleged crime prosecutable *ex officio* is committed, the State has the obligation to promote criminal proceedings and that, in these cases, this is the adequate avenue to clarify the facts, prosecute those responsible and establish appropriate criminal punishment. Under international standards, where serious human rights violations such as extrajudicial killings are alleged, the appropriate and effective remedy is precisely the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, the individualization and prosecution of those responsible. The Commission has consistently held that it is not necessary in such cases to exhaust civil actions before resorting to the inter-American system, since those remedies would not redress the main claim. In the instant case, this is the alleged arbitrary killing of a child, followed by a lack of due diligence in investigation, prosecution, and punishment of those responsible.

11. The Commission also understands that the Director of Public Prosecutions has exclusive authority under Sections 94(3) and (4) of the Constitution of Jamaica for making all decisions concerning criminal prosecutions instituted by it or any other organ, including the power to take over and continue, or to discontinue them at any stage before judgment is delivered. Accordingly, the State retains exclusive authority for pursuing criminal proceedings in respect of the circumstances relating to the alleged victim's death. While the record indicates that there is a provision under Jamaican law for "private prosecutions" which must get the consent of the Director of Public Prosecutions, the Commission considers that proceedings of this nature do not constitute remedies that the petitioners are required to exhaust. It is clear from the instruments and decisions of the inter-American system, as noted above, that the obligation to investigate, prosecute and punish serious violations of human rights rests with Member States, as the entities with the international legal commitment and resources to carry out these functions. To expect the petitioners to assume these responsibilities would not only be inconsistent with the system's jurisprudence, it would also place an inequitable burden on those who generally lack the required means and expertise.

12. In the present case, the Commission observes that on January 15, 2010 --more than two years after the killing of the alleged victim-- the BSI referred the case to the DPP, where the investigation since remained. More than 13 years after the death of the alleged victim, and 10 years since the referral of the case to the DPP, the State has not yet provided the Commission with any information on whether that Department reached a decision, or if charges have been brought against those responsible. In view of the foregoing, and in light of the information presented, the Commission concludes that there has been an unwarranted delay in the

final judgment of domestic remedies. Therefore, the IACHR must apply the exception provided for in Article 46(2)(c) of the American Convention.

13. Given the Commission's finding on the exception of Article 46(2)(c) of the American Convention in the present matter, the six-month period does not apply; also, the State has not contested compliance with this requirement. In the circumstances of the matter before it, the Commission finds that the petition was filed within a reasonable time.

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission notes that this petition includes allegations regarding the extrajudicial execution of the alleged victim by a police officer, as well as the lack of due process and due diligence in the criminal investigations and judicial proceedings that followed. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the claims made by the petitioners are not manifestly unfounded and require a substantive study on the merits as the alleged facts, if corroborated, could characterize violations of the rights protected by Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof.

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of November, 2020. Joel Hernández, President; Antonia Urrejola, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño and Stuardo Ralón Orellana, Commissioners.