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REPORT No. 282/20

PETITION 1016-13

REPORT ON ADMISSIBILITY

JEVAUGHN ROBINSON AND FAMILY
JAMAICA

Approved electronically by the Commission on October 12, 2020.

Cite as: IACHR, Report No. 282/20, Petition 1016-13. Admissibility. Jevaughn Robinson and family. Jamaica. October 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Jamaicans for Justice and the International Human Rights Center - Loyola Law School
Alleged victim	Jevaughn Robinson and family
Respondent State	Jamaica ¹
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights ² all in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	June 21, 2013
Notification of the petition	July 11, 2019
State's first response	December 6, 2019
Additional observations from the petitioner	May 2 and 3, 2019; May 5, 2020
Additional observations from the State	August 21, 2020

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<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 (rights 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 or exception to the exhaustion of remedies	Yes,
Timeliness of the petition	Yes

V. SUMMARY OF ALLEGED FACTS

1. The petitioners denounce the extrajudicial execution of alleged victim Jevaughn Robinson by members of the Jamaican police force, and the failure of the State to carry out a proper, timely and diligent investigation and prosecution. 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.⁴

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.

⁴ The petitioners refer notably to reports published by the IACHR: Inter-Am. Comm'n H.R., Press Release No. 59/08, *IACHR Issues Preliminary Observations on Visit to Jamaica* (Dec. 5, 2008); Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.144 Doc. 12, *Report on the Situation of Human Rights in Jamaica*.

2. Specifically, the petitioners allege that Jevaughn Robinson, a 13-year-old child was shot and killed on September 22, 2008 without justification by members of the Jamaican police force in St. Catherine Parish. They indicate that the alleged victim was running through an open lot near his home when police officers pursued him and opened fire, ultimately shooting him in the head and killing him. They further indicate that the police officers took the alleged victim's body in their patrol car and later returned to the scene to set fire to the area where he had laid dead. The petitioners hold that this extrajudicial execution falls within a well-documented pattern of hundreds of fatal police shootings, most of which remain uninvestigated; and that this exacerbates the absolute impunity of security forces in Jamaica, who use excessive and disproportionate force with disregard for human life.

3. The petitioners assert that the State has failed to diligently investigate, prosecute and punish those responsible for the crime. They also stress that since the extrajudicial killing of the alleged victim, the petitioners and his family have made numerous inquiries into the status of the investigation, but that they received no response. The petitioners further claim that in December of 2019, when they received the State response to the IACHR, they learned for the first time that in September 2019 --11 years after the murder of the alleged victim-- the Director of Public Prosecution ruled that charges should be brought against three Special Constables for the crime. However, no further information was provided as to the date of trial.

4. They also claim that the killing of the alleged victim and the suffering of his family are the direct result of deficient investigatory, prosecutorial and judicial actions that operate together to shield police from accountability. With regard to the State's argument that they did not exhausted civil remedies, the petitioners contend that these are not adequate for investigating and prosecuting extrajudicial killings. They refer to well-established IACHR position in similar situations in the sense that "the remedies that must be taken into account for the purposes of the admissibility of the petitions are those related to the criminal investigation and punishment of those responsible".⁵ Further, they argued that monetary compensation awarded to the victims' family because of a civil suit is not a sufficient remedy because it does not provide comprehensive reparations⁶ to the family of the alleged victim and that it should take place after the State fulfils its obligation to investigate and prosecute such crime.⁷

5. On its part, the State argues that the petition is inadmissible for failure to exhaust domestic remedies particularly because it was pursuing a criminal justice process and the petitioners had not exhausted civil proceedings. For the State, civil proceedings are the adequate avenue for the examination of the complaint and the subsequent finding of responsibilities for human right violations, as well as compensation as a form of relief. In this regard, the State requests the Commission to depart from the position taken in the admissibility report in the Michael Gayle Case⁸, and s points out that Section 19(1) of the Jamaican Constitution recognizes the right of persons to approach the Supreme Court for redress for human rights violations, which includes the right to life and the right no to be subjected to cruel and inhumane treatment. The State considers that this form of constitutional relief is an adequate and effective remedy for an allegedly unlawful killing. As to the criminal proceedings, the State informs that the Director of Public Prosecution ruled on September 2019 that charges should be brought against three Special Constables for the killing of the alleged victim. The State considers that this matter is being resolved internally, and therefore the Commissions' complementary jurisdiction should not be engaged. Further, the State maintains that any complaint of undue delay in pursuing the criminal justice

⁵ IACHR, German Eduardo Giraldo Agudelo and Family, Colombia. Admissibility Report No. 46/19, Petition 314-09, April 24, 2019, para. 11.

⁶ IACHR, Hugo Ferney León Londoño and Family, Colombia. Admissibility Report No. 50/19, Petition 1376-08, May 5, 2019, para. 9.

⁷ IACHR, Michael Gayle, Jamaica. Admissibility Report No. 8/03, Petition 191/02, February 20, 2003, para. 16.

⁸ The State notes that in the Michael Gayle admissibility report, the IACHR stated that: [...] the facts alleged by the petitioners involve the alleged violation of the non-derogable right to life, which under domestic law is an offense that would be prosecuted by the State on its own initiative. Therefore, it is this process, initiated and pursued by the State that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages. IACHR, Michael Gayle, Jamaica. Admissibility Report No. 8/03, Petition 191/02, February 20, 2003, para. 34.

process is simply an allegation of a breach of the duty to investigate, which should be placed before the Supreme Court of Jamaica for redress. Finally, it reiterates that the remedy to be exhausted is the Constitutional relief, which had not yet been initiated; accordingly, the State holds that the exception to exhaustion of domestic remedies invoked is inapplicable.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioners submit that the State failed to meet its duty to conduct an effective investigation, prosecution and adjudication. They allege that the State undertook some actions to investigate the alleged victim's death, and that in September 2019 the Director of Public Prosecution ruled that charges should be brought against the constables. However, no further information has been provided as to the development or results of the proceedings, and that there has been an undue delay in rendering a final judgment. Accordingly, they request the application of the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(c). In addition, they hold that civil proceedings need not be exhausted in the case of an alleged violation of the right to life when criminal proceedings have been initiated; and that they are not an adequate remedy for an extra-judicial killing case. For its part, the State alleges that it fulfilled its duty to investigate, prosecute and punish, but that the petitioners have failed to exhaust domestic remedies and thus the petition is inadmissible. The State submits that civil proceedings are an adequate and effective remedy and must be pursued by the petitioners under Article 46(1) of the American Convention.

7. 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 this is the adequate avenue in these cases to clarify the facts, prosecute those responsible and establish the appropriate criminal punishment.⁹ Under international standards, where serious human rights violations such as homicide are alleged, the appropriate and effective remedy is 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 to exhaust civil actions before resorting to the inter-American system, since such remedy would not redress the serious human rights violation claim. In the instant case, the central issue raised is the alleged victim's arbitrary killing, followed by the failure of due diligence in the investigation, prosecution, and punishment of those responsible.¹⁰

8. The Commission notes that the alleged victim was killed more than 12 years ago, and that the investigation, prosecution and establishment of criminal responsibilities is still outstanding, which would constitute *prima facie* an unwarranted delay. Additionally, the petitioners allege that the investigation into the crime was highly deficient and that there was tampering of the crime scene in order to obscure evidence; the Commission observes that this was not substantially controverted by the State. Additionally, the Commission notes that the State did not provide specific information or documents aimed at demonstrating that the irregularities denounced by the petitioners were addressed in judicial proceedings, or that a proper police investigation was carried out to find and punish 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 to the rule of exhaustion of domestic remedies, as provided for in Article 46(2)(c) of the American Convention.¹¹

8. 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. Given the circumstances of the matter before it, the Commission finds that the petition was filed within a reasonable time.

⁹ See IACHR, Report No. 87/08, Petition 558-05. Admissibility. Jeremy Smith. Jamaica. October 30, 2008, para. 36; IACHR, Report No.180/19, Petition P-1468-09. Admissibility. Pablo Gac Espinoza and family. Chile. September 11, 2019, para. 7; IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.

¹⁰ IACHR, Michael Gayle v. Jamaica, Admissibility Report No. 8/03, Inter-Am. Comm'n H.R., Petition 191/02, (Feb. 20, 2003), para. 41; IACHR, Report No. 112/19, Petition 973-09. Admissibility. Janice and Family. Jamaica. June 10, 2019, para. 13.

¹¹ IACHR, Report N° 8/03 Petition 191/02 Admissibility, Michael Gayle, Jamaica February 20, 2003 [Http://Cidh.Org/Annualrep/2003eng/Jamaica.191.02.Htm](http://Cidh.Org/Annualrep/2003eng/Jamaica.191.02.Htm)

VII. COLORABLE CLAIM

9. This petition includes allegations regarding the extrajudicial execution of the alleged victim by police officers, 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 of the petitioner are not manifestly unfounded and that they require a substantive study on the merits as the alleged facts, if corroborated, could characterize violations of 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).

10. With respect to the State's allegations regarding the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in article 47(b) of the American Convention; or if the petition is "manifestly unfounded" or "its total inadmissibility is evident" pursuant to subsection (c) of said article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, the Commission is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional standards, in accordance with Article 34 of its Rules of Procedure, the admissibility analysis of the Commission focuses on the verification of such requirements, which refer to elements that, if true, could constitute *prima facie* violations of the American Convention.¹²

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 12th day of the month of October, 2020. Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; and Julissa Mantilla Falcón, Commissioners.

¹² IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.