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REPORT No. 317/20

PETITION 1070-14

REPORT ON ADMISSIBILITY

IAN LLOYD AND FAMILY
JAMAICA

Approved electronically by the Commission on November 18, 2020.

Cite as: IACHR, Report No. 317/20, Petition 1070-14. Admissibility. Ian Lloyd and family.
Jamaica. November 18, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Clinic of the Loyola Law School
Alleged victim:	Ian Lloyd and family ¹
Respondent State:	Jamaica ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³ , in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	July 29, 2014
Additional information received at the stage of initial review:	April 18, 2019
Notification of the petition to the State:	May 22, 2019
State's first response:	October 18, 2019
Additional observations from the petitioner:	May 5, 2020
Additional observations from the State:	August 18, 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, deposit of the instrument of ratification of the American Declaration on July 19, 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) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Exception set forth in Article 46.2(a) of the Convention applies
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. The petitioners denounce the extrajudicial execution of the alleged victim, Ian Lloyd, 27 years old at the time, by a police officer, on July 19, 2010, as well as the failure of the State to carry out a proper, timely and diligent investigation and prosecution. They condemn a widespread pattern of extrajudicial

¹ Maria Wilson, mother of the alleged victim, and Valentina Natasha Opal Wilson, sister of the alleged victim.

² 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.

³ Hereinafter, the "American Convention" or the "Convention".

⁴ The observations submitted by each party were duly transmitted to the opposing party.

executions in Jamaica and structural defects in the criminal investigation of these incidents, resulting in a virtually absolute impunity for these killings.⁵

2. The petitioners allege that Ian Lloyd was shot and killed without justification on July 29, 2010, by an officer of the Jamaican Constabulary Force (hereinafter JCF), one of Jamaica's security forces, and allegedly amongst the deadliest in the world per capita.⁶ The petitioners highlight that there are conflicting accounts on what exactly happened on July 29. The information released by the JCF is in direct opposition to video footage of the incident captured by a private citizen and released to the media; officials have failed to reconcile the contradictions made evident by the video. The petitioners submit that, according to police reports, the officers attempted to apprehend the alleged victim in response to accounts that he had attacked and stabbed a woman. According to the police, the victim would have hurled a stone at the police team, as well as stabbed one of the police officers, resulting in the alleged victim being fatally shot. The petitioners submit that the video footage rather depicts a constable beating the alleged victim while he was unarmed and on the ground, and in the presence of six police officers. They allege that the brutal acts were conducted in plain view of on-lookers, who can be heard encouraging the brutality. It also shows the Sergeant Kelly fatally shooting the alleged victim while he was clearly subdued.

3. The petitioners allege that the Jamaican justice system is replete with numerous failings, particularly in cases of excessive force and extrajudicial killings by police officers, including lack of effective, prompt and thorough investigations, the failure of judges and prosecutors to treat cases with impartiality, and irregularities in the selection process for juries. They allege that neither the petitioners nor the family of the alleged victim have been able to obtain any information on the investigation⁷, except for the information derived from the video footage and news articles. Based on the above, and on information obtained on subsequent proceedings, they believe that the family has been denied a fair hearing because the investigation and prosecution of the crime have been severely deficient, resulting in a no-case submission ruling before the Circuit Court, with no prospect of resolution, and an impossibility to properly document vital evidence.

4. The petitioners indicate that on August 9, 2010, the Director of Public Prosecutions (hereinafter DPP) charged Sergeant Kelly with Ian Lloyd's murder. The Sergeant was granted bail on August 10, 2010. The petitioners allege that the case has faced significant delay. Notably, they were informed in February 2012 that the Crown still hadn't prepared the file; in September of 2012, the trial was pushed to February 2013 due to the absence of witnesses despite the fact that fifteen witness statements were recorded by police, eight of which were from police personnel and seven of which were collected from civilians. Finally, on March 7, 2013, the Court upheld a no-case submission by the defense attorneys⁸ and Sergeant Kelly was acquitted of the murder of the alleged victim. The petitioners indicate that the video footage of the shooting could not be tendered into evidence because the witness who recorded it was not present in court. In addition, they allege that the person who conducted the autopsy of the alleged victim was unavailable to provide a declaration on his belief in the truth of his report. They further indicate that in the course of the criminal proceedings, the judge expressed concerns about the chain of custody of the evidence and noted that prosecution witnesses sounded as though they were testifying for the defense. The petitioners submit that in cases such as the present one, it is the duty of the State to investigate, prosecute and punish those responsible. They argue that the failure from the State to conduct an effective investigation, prosecution and adjudication, leading to the acquittal of Sergeant Kelly based on a no-case submission ruling, despite the existence of video footage clearly depicting the incident and the recording of at least fifteen witness statements, is evidence that

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

⁶ The petitioners cite the Jamaicans For Justice & The George Washington University Law School International Human Rights Clinic, *Killing Impunity: Fatal Police Shootings and Extrajudicial Executions in Jamaica: 2005-2007* (Mar. 18, 2008) and the Jamaicans For Justice, *Pattern of Impunity: A Report on Jamaica's Investigation and Prosecution of Deaths at the Hands of Agents of the State* (Sept. 30, 2005)

⁷ The petitioners indicate that there is no obligation on the part of the government to provide the victims' family or its representatives with any information regarding a case and there is no means of meaningful participation for them in the judicial process.

⁸ A no-case submission is presented when the defense contends that the Crown has not made a *prima facie* case against his client nor presented any evidence to support the charge against him.

the criminal prosecution in Ian Lloyd's case was ineffective. In accordance, the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(a) is applicable.

5. The petitioners further affirm that the family of the alleged victim does not have the means to pay for attorney's services, and that there is no indication that the State would have been able to provide the Lloyd family free representation to pursue civil remedies. They also submit that, contrary to what is alleged by the State, civil remedies are not adequate remedies for a case of extra-judicial killing⁹, and that while monetary compensation awarded to victims as a result of a civil suit is one of the possible remedies, it is not a sufficient one¹⁰, but is rather eventual and incidental. It comes only after the State has fulfilled its basic obligation to investigate and prosecute. Further, in a civil proceeding, the burden of proof is shifted from the State to the plaintiffs, which is inconsistent with the Inter-American System's jurisprudence¹¹. Accordingly, civil proceedings need not be exhausted in the case of an alleged violation of the right to life when criminal proceedings have been initiated.

6. For its part, the State contends that the petition is inadmissible because the domestic remedies have not been exhausted in accordance with Article 46(1)(a) of the Convention and the petitioners have not established *prima facie* violations of the American Convention. The State submits that the Petitioner has not exhausted civil proceedings in Jamaica in the form of constitutional relief for the alleged violation of human rights, and thus have filed to meet the requirement set forth in Article 46(1). Section 19(1) of the Constitution of Jamaica recognizes the rights of persons to approach the Supreme Court for redress for human rights violations, including violations of the right to life and of the right not to be subjected to cruel and inhumane treatment. The Government hereby invites the Commission to depart from its previously held position in so far as suggesting that civil remedies are inadequate or ineffective remedies for alleged breaches of non-derogable rights by the State, and in turn submits that civil proceedings are an adequate and effective remedy and must be pursued by the petitioner regardless of whether the State has failed to adequately pursue the criminal process. 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 provide for compensation, including allowing for exemplary damages, which is an adequate form of relief¹². Jamaica further argues that by the very nature of the criminal process, the responsibility of the State cannot be properly established; the criminal law process, in fact, holds *individuals* responsible for offences. In addition, they cannot provide or facilitate the delivery of compensation. The State submits that civil proceedings are effective as it adheres to the principles of due process, including safeguards for judicial independence and impartiality. Finally, the acquittal of the alleged perpetrator does not preclude the petitioners from seeking redress from the Supreme Court in civil proceedings. Thus, the State underscores that a perceived failure to investigate and prosecute does not dispense with the need to exhaust remedies for allegations that the State is responsible for an unlawful killing or failed in its duty to prevent or punish its occurrence. Additionally, and as a result, no exception set forth in the Convention applies – domestic remedies are still available and accessible to the petitioners, including the ones aimed at ensuring due process in the investigations and judicial processes.

7. Furthermore, the State contends that the allegation that it failed to adequately investigate and prosecute is manifestly groundless. The Government submits that its duty to investigate and prosecute does not involve an obligation to secure the conviction of the alleged perpetrator; the mere fact that the trial ended with an acquittal does not *ipso facto* mean that the State has failed to effectively investigate and prosecute¹³. The Government submits that the investigations were carried out promptly by the relevant authorities. In fact, the investigations commenced on the day of the fatal shooting and the appropriate procedures were carried out by investigating officers. The DPP notably ensured that the witnesses felt greater comfort in testifying by moving the trial in another district. The State claim that the petitioners do not dispute the impartiality

⁹ The petitioners refer to IACHR, *German Eduardo Giraldo Agudelo and Family v. Colombia*, Admissibility Report No. 46/19, Inter-Am. Comm'n H.R., Petition 314-09, (April 24, 2019),

¹⁰ The petitioners refer to IACHR, *Hugo Ferney Leon Londono and Family v. Colombia*, Admissibility Report No. 50/19, Inter-Am. Comm'n H.R., Petition 1376-08, (May 5, 2019)

¹¹ The petitioners refer to IACHR, *Michael Gayle v. Jamaica*, Admissibility Report No. 8/03, Inter-Am. Comm'n H.R., Petition 191/02, (Feb. 20, 2003)

¹² The State refers to decisions by the European Court of Human Rights, namely *Margaret Caraher v United Kingdom*, App No. 24520/94, ECtHR, 11 January 2000, and *Case of Kelly and others v United Kingdom*, App No. 30054/96, ECtHR, 4 May 2011

¹³ The State refers notably to the decision *Michael Gayle v Jamaica*, Inter-Am. C.H.R., Report No. 92/05, October 24, 2005, para. 98

displayed by the tribunal but rather contend that the outcome of the trial does not address the alleged human rights violations. The State indicates that the criminal process is subject to the rules of evidence to ensure the due process rights of the accused, which the Government is also obliged to respect – the authenticity and reliability of the video as evidence was questionable, per Jamaican law. In addition, notwithstanding the prosecution’s attempts, the witnesses consistently relayed a narrative which was inconsistent to what was alleged to be on the video recording. As such, the Court accepted the no-case submission of the defense and the accused was acquitted.

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

8. The petitioners allege that the State failed to meet its duty to conduct an effective investigation, prosecution and adjudication, leading to the acquittal of Sergeant Kelly based on a no-case submission ruling, thus leaving the crime in impunity. They argue that the criminal prosecution in Ian Lloyd’s case was ineffective, and, in accordance, that the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(a) is applicable. In addition, they submit 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 a case of extra-judicial killing. For its part, the State submits that the petitioners have not fulfilled their obligation to exhaust the domestic remedies and that the petition is thus inadmissible. The State submits that civil proceedings are an adequate and effective remedies and must be pursued by the Petitioner regardless of whether the State has failed to adequately pursue the criminal process.

9. With respect to the State’s argument regarding the lack of exhaustion in the form of civil redress, the IACHR recalls that whenever an alleged crime prosecutable *ex officio* is committed, the State has the obligation to promote the criminal proceedings and that, in these cases, this is the adequate avenue to clarify the facts, prosecute those responsible and establish the appropriate criminal punishment. Under international standards, where serious human rights violations such as extra judicial 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, individualize and prosecute the people responsible. The Commission has repeatedly held that it is not necessary to exhaust civil action before resorting to the Inter-American system since that remedy would not redress the main claim made concerning the alleged arbitrary killing of Mr. Lloyd, followed by the alleged failure of due diligence in investigation, prosecution, and punishment of those responsible, together with delay in conducting such process.¹⁴ The Commission observes that in the present case, the State undertook procedures for investigating the killing of the alleged victim, and on August 9, 2010, charged Sergeant Kelly with Ian Lloyd’s murder, and that on March 7, 2013, the District Court upheld a no-case submission by the defense attorneys and Sergeant Kelly was acquitted of the murder of the alleged victim. On that matter, the Commission notes that the petitioners claim that the investigations were deficient, did not provide for the participation of the relatives of the alleged victim, and wrongly lead to the acquittal of Sergeant Kelly, despite the existence of evidence to the contrary, in addition to alleging structural defects in the investigation and prosecution of extrajudicial executions in Jamaica. Based on the above, and taking into consideration previous observations made on the situation of the human rights in Jamaica, where the Commission identified problems at all stages of post-murder investigations that contribute to this reality of impunity, including lack of impartiality of the investigating institution, tampering with evidence, and severe lack of resources¹⁵, the Commission concludes that, *prima facie*, it appears the domestic remedies did not afford due process of law in order to protect the rights allegedly violated. As a result, the exception set forth in Article 46.2(a) of the Convention applies. The causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the Report adopted by the IACHR on the merits in order to determine whether there have been violations of the American Convention.

10. With respect to the filing deadline, the Commission notes that petition was received on July 29, 2014, that the alleged victim was killed on July 19, 2010, that on March 7, 2013 a verdict of non-guilty was

¹⁴ 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.

¹⁵ IACHR. Report on the situation of human rights in Jamaica, OEA/Ser.L. OEA/Ser.L/V/II.144 Doc.12, 10 of August of 2012, p. 27 and following.

rendered, and that as such the effects of the alleged lack of due process and due diligence in the criminal investigations would extend to the present; the Commission concludes that the petition was filed within a reasonable time and that the admissibility requirement relating to the filing deadline must be found satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

11. 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 of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial) 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 and 25 of the American Convention, in relation to its Articles 1.1 and 2;

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 18th day of the month of November, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.