

OEA/Ser.L/V/II.
Doc. 307
12 October 2020
Original: English

REPORT No. 290/20
PETITION 1077-14
REPORT ON ADMISSIBILITY

PAUL RICHARD BROWN AND FAMILY
JAMAICA

Approved electronically by the Commission electronically on October 12, 2020.

Cite as: IACHR, Report No. 290/20, Petition 1077-14. Admissibility. Paul Richard Brown and family. Jamaica. October 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Clinic of the Loyola Law School
Alleged victim:	Paul Richard Brown 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 with 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 15, 2019
Notification of the petition to the State:	June 3, 2019
State's first response:	September 27, 2019
Additional observations from the petitioner:	April 30, 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 with 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:	Yes, exceptions set forth in Article 46.2(a) and (c) apply
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. The petitioners denounce the extrajudicial execution of the alleged victim, Paul Richard Brown, by a member of the Jamaica Constabulary Forces (hereinafter JCF) on January 5, 2009, and the failure of the State to carry out proper, timely and diligent investigation and prosecution. They condemn a widespread pattern of extrajudicial executions by security forces members in Jamaica and structural defects in the criminal investigation of these incidents, resulting in a virtually absolute impunity for these killings.⁵

¹ Winifred Brown, wife of the alleged victim; Gaboyd and Galey, children 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 "Convention".

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

⁵ 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. The petitioners claim that the JCF is one of Jamaica's security forces, and allegedly amongst the deadliest in the world per capita.⁶ They submit that while the alleged victim was driving his commercial bus, with passengers, an off duty member of the JCF pulled up beside him in a white Mazda car, got out of it, came up to the alleged victim's door and shot him in his head. The conductor of the bus⁷, who accompanied the alleged victim at the time explained that he noticed a white car with tinted window on their left at an earlier light stop, and saw it again when they stopped to pick up a passenger. The car followed them and when the bus had to do another stop, it came around its right side and blocked the bus from moving forward. The conductor then saw the car driver, later identified as Officer Owen Montague, get out of his vehicle and come towards the bus with a gun in his hand. Without saying a word, he then shot the alleged victim and drove off. The conductor took the alleged victim to Kingston Public Hospital, where he was pronounced dead on arrival. The petitioners indicate that the police version of the events contradicts this version of events. According to the police, Mr. Brown's bus would have collided with Officer Montague's white car in the left rear and then failed to stop. Officer Montague would have tried to stop the bus, but was unable to do so until the bus eventually stopped to let a passenger off. Once Officer Montague blocked the bus with his car, he and Mr. Brown would have gotten into an argument before Officer Montague shot Mr. Brown in the head.

3. The petitioners indicate that Sergeant Bennet, from the Hunts Bay Police, initiated an investigation on the day of the killing. Officer Montague handed him his .38 service revolver, in addition to five rounds of .38 cartridges and one spent .38 casing, and they were put into envelopes and marked as exhibits. The petitioners submit that there is no indication that he handled this evidence properly. Bennet then interviewed the bus conductor as well as the owner of the bus, and observed that the right front side of the bus was damaged, with white paint on it. The Scenes of Crime unit processed the various pieces of evidence, swabbed Montague's hands and photographed his car. The bus was taken to the Hunts Bay Police Station. The investigation and evaluation of the evidence continued in collaboration with the JCF's Bureau of Special Investigation (BSI) – a clear conflict of interests according to the petitioners, since the officer targeted by the investigation is himself a member of the JCF. The same day, the Assistant Commissioner of Police in command at BSI issued a report concluding that Mr. Brown's bus collided with the white car in the left rear and failed to stop. On January 6, 2009, the office of the Director of Public Prosecutions advised that the officer be charged with murder. Officer Montague was arrested the next day. A preliminary inquiry hearing took place starting on October 7, 2009, where the wife of the alleged victim and the conductor testified. However, the petitioners indicate that before the cross-examination could take place, the conductor disappeared, fearing for his life.⁸ The matter was transferred to the Supreme Court for a trial scheduled to begin on May 7, 2010, but the date was subsequently postponed on multiple occasions (to June 11, 2010; July 2, 2010; February 25, 2011; and December 9, 2011). On June 6, 2019⁹, officer Montague was sentenced to three years of imprisonment, after having pleaded guilty to manslaughter.

4. The petitioners submit that the extrajudicial execution of the alleged victim is attributable to the State. They submit Montague acted under color authority when he shot the alleged victim with a government-issued service weapon, in addition to the government having a specific obligation to prevent improper use of service weapon. Moreover, the State has a general obligation to protect the rights to life and physical integrity, reinforced in the context of the widespread occurrence of extrajudicial killing of civilians by Jamaican police forces, where the State knew or ought to have known of it and should have taken steps to prevent it. Additionally, the petitioners submit that despite the conviction, the State still failed to properly prosecute and punish the crime. They argue that the judicial system has been unable to deliver justice and provide the victims with effective remedies, and that the investigation, prosecution and punishment of Officer Montague in this case is patently inadequate, falling well below international standards. The murder of the alleged victim took place in 2009, and only in 2019 was the responsible sanctioned – an unjustified ten years period, during which the State failed to provide any meaningful updates to the family and the petitioners. In addition, they submit that a three years sentence is a gross violation of the principle of proportionality between

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 explain that each bus is staffed with a driver, in this case Paul Brown, and a conductor who directs and instructs the driver on what to do and where to go, in this case Delroy Bryan.

⁸ The petitioners indicate that it is reported that he has since been located, but this information have not been verified.

⁹ 10 years after the murder, and 5 years after the filling of the petition before the IACHR.

crime and punishment. The petitioners are shocked that the State justifies the acceptance of Officer Montague's guilty plea to manslaughter because there was "enough evidence to raise the issue of provocation" – a simple traffic altercation – which cannot justify the killing of a human being. Jamaica has an obligation to deter extra-judicial killings and not justify them. Finally, they submit that the exception to the rule of exhaustion of domestic remedies set forth in Article 46.2(c) of the Convention applies since there has been an unwarranted delay in rendering a final judgement

5. In addition, they claim that neither the civil suit nor the constitutional action are effective remedies that need to be exhausted. The petitioners indicate that the alleged victim's relatives do not have the means to pay for an attorney's services in civil proceedings, and that there is no indication that the State would have been available to provide them free representation. These remedies are thus inaccessible to them. They also submit that, contrary to what is alleged by the State, civil remedies are not adequate remedies for a case of extra-judicial killing¹⁰, 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 one¹¹. It comes only after the State has fulfilled its basic obligation to investigate and prosecute¹².

6. For its part, the State contends that Jamaica cannot be held responsible for unlawfully depriving Paul Richard Brown of his life, as it is insufficient, as a matter of law, that Montague was a member of the JCF, since he was off duty at the time of the event, as recognized by the petitioners. Notably, in both versions of the events outlined in the petition, Montague did not identify himself nor was he identified by anyone as a police officer at the time of the alleged events. The State further submits that the petition is inadmissible because the domestic remedies were not exhausted, the unwarranted delay exception is inapplicable in the present petition and the State fulfilled its duty to investigate, prosecute and punish.

7. The State submits that the civil proceedings have not been exhausted in Jamaica in the form of constitutional relief for the alleged violation of human rights, and thus the requirement set forth in Article 46(1) of the Convention haven't been met. 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. 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 State submits that a remedy capable of establishing State liability is essential, where it is alleged, as in this case, that the State is directly responsible for unlawfully depriving someone's life. Civil proceedings allow so, contrasting with the criminal process, which by its very nature cannot properly establish the responsibility of the State; the criminal law process rather 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. The State underscores that a perceived failure to adequately 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. Irrespective of whether it is alleged that the criminal justice process is not sufficiently pursued, civil proceedings remain adequate and effective.

8. The State further argues that the well-established principle that States have the duty to pursue the criminal justice process is incompatible with the view that the criminal justice process is a remedy to be exhausted and invites the Commission to depart from this approach. The unwarranted delay exception is inapplicable where the appropriate remedies have never been initiated by the alleged victims or petitioner; the criminal justice is not a "remedy" that should be "exhausted" by a petitioner. It is submitted that the adequate pursuit of the criminal justice process is a form of reparations or relief, rather than a forum in which arguable claims of human rights violations are resolved and which alleged victims must pursue to gain relief. It is instead

¹⁰ 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),

¹¹ 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)

¹² 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)

reiterated that the remedy that is to be exhausted in this matter is civil/constitutional proceedings. Therefore, had there been inordinate delay in those proceedings, the unwarranted delay exception would have been applicable – in the present case, there has been no pursuit of this remedy.

9. Finally, the State submits that it has resolved any arguable complaint of an extra-judicial killing thus depriving the Commission of jurisdiction over the complaint. The petition acknowledges that the investigation commenced immediately, and that it involved *inter alia* interviewing Owen Montague, taking possession of his gun as evidence, examining his car, examining the scene of the shooting and interviewing eyewitnesses. The Director of Public Prosecutions promptly determined that the officer be arrested and charged with murder. The criminal proceedings commenced on August 10, 2009. Montague pleaded guilty to the offence of manslaughter for the killing of Paul Brown and, on June 6, 2019, he was sentenced to three years imprisonment. Accordingly, the State fulfilled its duty to investigate, prosecute and punish. The petitioners' thus bear the burden of showing that the State's efforts have nonetheless been manifestly ineffective – they failed to do so. The petitioners failed to point at any serious defect or any significant shortcoming in the investigation. Additionally, when taking into consideration that Montague was sentenced for manslaughter, rather than murder, and pleaded guilty, there is no manifest disproportion between the nature of the offence and the sentence imposed. The DPP chose not to contest the plea of manslaughter as it judged that there was enough evidence to raise the issue of provocation. Finally, though the State regrets the delay in concluding this case, it is manifest that the delay did not undermine the integrity or effectiveness of the criminal justice process, which the State reiterates should be the Commission's primary consideration. The State also notes that the delay in concluding this case was due mainly to the unavailability of defense counsel or witnesses for the prosecution, on numerous occasions. The Commission, in determining the overall effectiveness of the State's efforts, must accord the appropriate level of deference to the strategies employed and the judgments and assessments made by national authorities concerning matters of fact and internal law. The Commission lacks jurisdiction, in its quasi-judicial capacity, over such a complaint.

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

10. The petitioners submit that the State failed to meet its duty to conduct an effective investigation, prosecution and adjudication. They argue that the criminal prosecution in Paul Richard Brown's case was ineffective, that there has been undue delay between the murder and the conviction and that the three years sentencing is grossly disproportionate to the crime committed. They submit that, in accordance, the exception to the rule of exhaustion of domestic remedies set forth in Article 46(2)(c) 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 it fulfilled its duty to investigate, prosecute and punish, but 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 is an adequate and effective remedy and must be pursued by the petitioners under Article 46.1 of the Convention.

11. 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.¹³ Under international standards, where serious human rights violations such as homicide 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. Brown, 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 observe

¹³ See IACHR, Report No. 87/08, Petition 558-05. Admissibility. Jeremy Smith. Jamaica. October 30, 2008, par. 36.; IACHR, Report No.180/19, Petition P-1468-09. Admissibility. Pablo Gac Espinoza and family. Chile. September 11, 2019, par. 7; IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.

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.

that in the present case, the State undertook procedures for investigating the killing of the alleged victim, and on January 7, 2009, charged Officer Montague with Paul Richard Brown's murder. The Commission also notes that on June 6, 2019, Officer Montague was sentenced to three years imprisonment for manslaughter, after pleading guilty to the lesser charge. The petitioners claim, however, that the investigations were deficient and did not provide for the participation of the relatives of the alleged victim, that the ten years delay between the murder and the conviction was unjustified, and that the sentence was grossly disproportionate, inconsistent with the evidence. Based on the above, and on the alleged structural defects in the investigation and prosecution of extrajudicial executions in Jamaica¹⁵, the Commission notes, for the purpose of the analysis of admissibility, that the petitioners exhausted all the remedies available in the domestic legal framework, and that, consequently, the petition meets the requirement established in Article 46.1.a of the Convention.

12. As to timeliness, the Commission notes that the petition was filed on July 29, 2014 and that the final decision by which domestic remedies were exhausted was issued on June 6, 2019. Thus, the petition meets the requirement set forth in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. The Commission notes that this petition includes allegations regarding the extrajudicial execution of the alleged victim, as well as the lack of due process and due diligence in the criminal investigations and judicial proceedings that followed, undue delays and a sentence disproportionately lenient in relation to the gravity of the crime committed. 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). Likewise, the Commission will analyze at the merits stage whether the sentence imposed to the perpetrator as a result of the criminal proceeding follow the standards set by of the American Convention.

14. 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, it 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 focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violation of the American Convention¹⁶.

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 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.

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.

¹⁶ CIDH, Informe No. 143/18, Petición 940-08. Admisibilidad. Luis Américo Ayala Gonzales. Perú. 4 de diciembre de 2018, párr. 12.