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REPORT No. 366/20
PETITION 2234-13
REPORT ON ADMISSIBILITY

PAUL WALLACE AND FAMILY
JAMAICA

Approved electronically by the Commission on December 12, 2020.

Cite as: IACHR, Report No. 366/20, Petition 2234-13. Admissibility. Paul Wallace and family.
Jamaica. December 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Center - Loyola Law School (IHRC) and Jamaicans for Justice (JFJ)
Alleged victim:	Paul Wallace and family
Respondent State:	Jamaica ¹
Rights invoked:	Articles 4 (right to life), 5 (humane treatment), 8 (fair trial), 25 (judicial protection), 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:	June 21, 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 and November 12, 2019, November 20, 2020
Additional observations from the State:	August 5, 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), 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 (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 that Pastor Paul Wallace (“the alleged victim”) was shot and killed without justification by members of the Jamaican police on September 19, 2009 in Auldyard, Westmoreland. 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 further allege that crime falls within a well-documented pattern of hundreds of fatal shootings carried out by security forces each year, which the State rarely, if ever, adequately investigates or punishes due to structural defects in the criminal investigation of these crimes, resulting in virtually absolute impunity.⁴

2. Community members mentioned that the alleged victim had run out of cooking gas, so he went to a nearby piece of land to collect firewood for his stove when he was shot. The petitioners indicate that the officer who shoot the alleged victim was assigned to the Savanna-la-Mar Police Station; and that he was the son-in-law of the owner of the property where the alleged victim was shot. According to one account, the owner of the property approached the alleged victim from behind, called out to him and then shot him. The community members also attested that it was a common practice in the area to enter such land without protest from the owner. The petitioners indicate that while there are no eyewitness accounts of the execution, residents heard the gunshot that killed the alleged victim early in the morning. One of the neighbors heard someone who screamed “murder, Jesus, Jesus, Jesus”, followed by three more gunshots. When the neighbor went to investigate what had happened, he found the alleged victim’s body in the bushes; he was taken to a hospital where he was pronounced dead. The petitioners submit that the alleged victim was ordained as minister in 2004 and was a beloved member of the community⁵; and that his killing had a profound emotional impact on both his family and the community. The alleged victim spoke openly about violence in the community and contributed to an article documenting violence against Jamaican clergy members that was published posthumously in the Jamaican Gleaner newspaper.

3. With regard to the investigation, the petitioners assert that the State failed to conduct a proper and diligent investigation. The first stage of the inquiry was handed over to the Bureau of Special Investigations (BSI). At the time, the head of the BSI told news agencies that the police officer implicated in the fatal shooting had been relieved of his weapon, and that the weapon had been sent to the forensic lab for testing. In December 2009, after completing the investigation, the BSI referred the file to the Office of the Director of Public Prosecution (DPP). Over more than ten years since the murder of the alleged victim, the petitioners and his family members have requested on several occasions information regarding the case, but received no response. They submit that the investigation has been languishing since then at the office of the DPP, which has not made a ruling to determine whether the case will be prosecuted. The petitioners 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 a miscarriage of justice.

4. 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 rights⁶ and submits that the petitioners must pursue them regardless of the

⁴ The petitioners refer notably to IACHR Press Release No. 59/08, *IACHR Issues Preliminary Observations on Visit to Jamaica* (Dec. 5, 2008).

⁵ After the murder of the alleged victim, community members gathered to protest the shooting of the pastor, and organized additional protests the weeks following his death to call upon the government to bring the shooter to justice. See RJR News, [Retirement residents block the road over minister’s death](#), September 20, 2009.

⁶ 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).

criminal proceedings. 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 further holds 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.

5. Furthermore, the State contends that the allegation regarding the failure to adequately investigate and prosecute this matter is manifestly groundless. Jamaica holds that any such claim cannot be 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 an 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 offer as a form of reparation, the possibility of ordering State agents to fulfil the duty to investigate, where there is any breach; and that 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 alleges 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

6. 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 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 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 alleges 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.

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, 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 the alleged victim, followed by a lack of due diligence in investigation, prosecution, and punishment of those responsible.

8. The Commission also understands that the Director of Public Prosecutions has exclusive authority under Sections 94 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.

9. The Commission observes that the BSI referred the case to the DPP in December 2009, where the investigation has remained since. More than 11 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.

10. 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

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 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), 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 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 December, 2020. Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.