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REPORT No. 289/20
PETITION 2187-13
REPORT ON ADMISSIBILITY

FREDRICK MALCOLM “MICKEY” HILL AND FAMILY
JAMAICA

Approved electronically by the Commission on October 12, 2020.

Cite as: IACHR, Report No. 289/20, Petition 2187-13. Admissibility. Fredrick Malcolm “Mickey” Hill and Family. Jamaica. October 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Clinic of the Loyola Law School
Alleged victim:	Fredrick Malcolm “Mickey” Hill and family ¹
Respondent State:	Jamaica ²
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 25 (Judicial Protection) of the American Convention on Human Rights ³ , in relation to its Article 1.1 (Obligation to respect rights) and 2 (Domestic Legal Effects)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	June 21, 2013
Additional information received at the stage of initial review:	May 19, 2014, November 16, 2016
Notification of the petition to the State:	May 8, 2019
State’s first response:	June 1, 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, exception set forth in Articles 46.2. c applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners denounce the extrajudicial execution of the alleged victim, Fredrick Malcolm “Mickey” Hill, by a police officer, on November 4, 2010, as well as the failure of the State to carry out proper, timely and diligent investigation and prosecution. They claim the relatives of the alleged victim has been denied a fair hearing as a result. They condemn a widespread pattern of extrajudicial executions in Jamaica and structural defects in the criminal investigation of these incidents, resulting in a virtually absolute impunity for these killings⁵.

¹ Brenda Kathryn Hill, wife of the alleged victim; Fredrick Hill, father of the alleged victim; Fredrick Harrison Hoesen, son of the alleged victim; Andie, Courtney, Richard and John Hill, brothers of the alleged victim; Dadria Ferguson, sister-in-law of the alleged victim and her daughter Rebecca.

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.

⁵ The petitioners refers notably to a report 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)

2. The petitioners allege that Mickey Hill was shot and killed without justification on November 4, 2010, in Negril, 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 capita⁶. The petitioner indicates that the official version from the police differs greatly from the version of six eyewitnesses present at the scene of the crime. The latter allege that on the morning of the event, the alleged victim was chatting with his brothers at a small snack shop operated by them, next to the Sunrise Club Hotel, having set on the ground his grocery bags containing a packet of corn meal, a tin of condensed milk, and a small bag of dog food. At approximately 9:15 a.m., a blue police van with tinted windows, carrying officers of the JCF from Spanish Town, pulled over near the Sunrise Hotel, purportedly to investigate information about gunmen on the hotel premises. Six to eight officers got off the van, carrying M16 automatic rifles and approached the group. The petitioners indicate that all officers but one, Sergeant Malica Reid, were in uniform and wearing kerchiefs or masks to cover their faces. The officers ordered the group to stand up, and asked Mickey Hill for cornmeal and condensed milk. When he stood up, Sergeant Reid fired a three-shot burst at him, hitting him twice, once in the chest, and once in his neck. The alleged victim died immediately. The petitioners allege that right after the shooting, Hill's sister-in-law looked at Sergeant Reid and said "God yu kill him." The officers pointed their guns at the rest of the group and threatened to shoot them too if they did not go home. Some of the people present refused to leave the scene and a second van arrived, carrying reinforcements from the JCF. An agitated crowd then gathered to try to stop the officers from leaving, but the spectators were moved away and the Spanish Town force's bus was allowed to leave. The petitioners indicate that an ambulance that had been dispatched to the scene left empty and instead, four officers lifted Mickey Hill's body by each holding an arm or leg and tossed him in the back of a pickup truck, refusing to give his family information about where his body was being taken. He was eventually transported to the Savannala-mar hospital, thirty minutes from Negril, where he was declared dead. The petitioners allege that the police force claim that Mickey Hill was shot during a shootout with gunmen who managed to escape the hotel, and that the police officer would have fired at the alleged victim in self-defense. The police added that after the shootout they recovered a gun under a palm tree on the hotel grounds, near the alleged victim's body. None of the other witnesses indicates having seen a firearm, though it would have been in plain view. The serial number of the allegedly recovered gun was later determined to match that of a pistol found at the scene of another killing in which the same JCF unit was involved. Finally, the petitioners submit that according to Sergeant Reid's own account of the incident, Mickey Hill was not one of the alleged gunmen who supposedly fired upon the officers.

3. The petitioners indicate that on November 5, 2010, the Bureau of Special Investigations (hereinafter "BSI") began an investigation into the killing of the alleged victim. On November 9, 2010, the Independent Commission of Investigations (hereinafter "INDECOM"), and independent commission of the Parliament which gradually replaced the BSI as the main investigator of incidents involving fatal shootings by police, also began an investigation into the killing, receiving statements from seven eyewitnesses to the shooting. On December 23, 2010, INDECOM submitted a partially complete file on its investigation to the Office of the Director of Public Prosecutions (hereinafter "DPP"), concluding that there was enough information to suggest a strong *prima facie* case against Sergeant Reid. INDECOM submitted additional files to the DPP on February 1, 2011, and February 8, 2011, recommending that Sergeant Reid be charged for murder. On February 25, INDECOM laid criminal charges against Sergeant Reid before the Savanna-la-mar Magistrate's Court. Sergeant Reid was released on bail and was ordered to return to the court on March 1st⁷. The DPP responded with hostility to this, and soon after INDECOM laid the charges, its director indicated that the DPP would announce its own ruling on the case. A battle of jurisdiction followed, and on March 15, the DPP issued a ruling that Sergeant Reid should be charged with murder and on March 16, 2011, INDECOM Commissioner Terrence Williams said his office would provide full support to DPP in the case. The DPP Director completed the ruling on March 16, 2011⁸. She indicated that no preliminary inquiry was necessary, and that the case would be placed on the Supreme Court docket "as soon as the file is completed by the investigators." On July 29, 2011, a DPP official appeared before a judge, but did not produce the paperwork necessary to set a trial date. On October

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 this marked the first time that the newly formed Commission had laid charges against an alleged offender.

⁸ And subsequently a *nolle prosequi* was entered on the same day to discontinue the proceedings by the Westmoreland Magistrate Resident Magistrate's Court that had been commenced by INDECOM

28, 2011, the case was again postponed because the DPP was not present when the Judge called the case four hours earlier than it was scheduled. In both January and March 2012, the case was again postponed, and because there were still outstanding documents to be served on the defense, a trial date was yet to be set, while Sergeant Reid remained out on bail, and on active duty. At the time of presenting this petition, in June 2013, the case was still at the Plea and Case Management stage and the case had been postponed ten times. The wife of the alleged victim was informed that according to INDECOM, if both the defense and the prosecution have their cases in order, trial date should be set by the court. The petitioners indicate that as of 2016, no less than eighteen court hearings have been held in the three years since the petitioner was filed, but neither the prosecution nor the defense have completed the disclosure of evidence and no trial date has been set.

4. The petitioners claim that the State failed to conduct a thorough, prompt, and impartial investigation into the circumstances of Mickey Hill's killing; it also failed in its duty to diligently and impartially prosecute Sergeant Reid, further denying the petitioners access to an effective remedy⁹. They claim that the JCF failed to exercise due control over the scene of the crime –crime in which they were themselves involved –, rendered evident from the fact that a gun was allegedly discovered, whilst not corroborated by a single witness not associated with the JCF. The alleged victim's body was removed in a way that made it impossible for forensic test to be conducted, and resulted in traces of gunpowder residue being detected on his hands, even though all witness statements indicate that Mickey Hill was not holding a firearm. The firearm used by Corporal Reid was not returned for over four hours, in deviation from JCF policy, and statements from the members of the JCF were not obtained until nearly three weeks after the shooting. An autopsy was not performed on Mickey Hill until a full week after his death. They further question whether the Forensic Laboratory, as part of the JCF, can be considered an appropriate independent agency for the purposes of investigations of shootings by JCF officers. They submit that delays in the collection of evidence by State agents made it possible for evidence to become lost or tainted, and indicate that one of the prosecution's most compelling witnesses dies in August 2017, putting at risk the conviction of Sergeant Reid. Despite the fact that this was designated as "urgent," it took DPP over four months to charge Reid, even when there was an overwhelmingly amount of evidence against him. The petitioners finally alleged that the relatives of the victims were harassed by the police during the investigation¹⁰. As a result of the unwarranted delays and failure in the investigation and prosecutions, the petitioners submit that the petition meets the exception of Article 46.2.c of the American Convention to the rule of exhaustion of domestic remedies.

5. For its part, the State submits that the petition is inadmissible because (a) the State has resolved or adequately redressed the complaint of the alleged extra-judicial killing, (b) there has been a failure to exhaust domestic remedies for the alleged failure of the State to adequately pursue the criminal justice process and (c) the allegation that the State has failed to adequately pursue the criminal justice process is manifestly groundless.

6. The State submits that in 2014, the Supreme Court of Jamaica ruled in favor of the widow of the alleged victim and its near relations, and granted compensation for the unlawful killing of the alleged victim. Accordingly, the State submits that any consideration of the allegations surrounding the extra-judicial killing of Mickey Hill by the Commission would be without object or purpose, as the State adequately addressed the substance of the complaint in this case. Civil remedies are adequate and effective remedies for alleged breaches of non-derogable rights by the State, including for cases of unlawful killings¹¹. In addition, State's liability and compensation cannot be properly established through the criminal process, nor the question of whether an individual was acting in his or her official capacity. The criminal justice process cannot be the appropriate

⁹ The petitioners indicate that the failure observed are consistent with a pattern of police conduct in similar cases.

¹⁰ The petitioners allege that around two weeks after the events, the Hill family noticed a car with tinted windows parked outside of the Sunrise Hotel, and saw someone taking pictures of the hotel and of the alleged victim's brother, Andie. The family reported the incident to INDECOM and to the Negril Police. About ten minutes later, a car from the Negril Police Station arrived at the hotel and the Negril officers spoke to the individuals in the car, took their license plate number and let the car leave. Afterwards, the officers reassured Andie Hill that the individuals were also police officers, purportedly taking pictures of the site of Mickey Hill's killing as part of the investigation.

¹¹ The Sate refers to Valentin Basto Calderon and Others, Case 10.455, Inter-Am. C.H.R., Report No. 45/17, May 25, 2017 paras. 193, 210.

mechanism in cases like this as otherwise the international human rights system would be geared towards establishing individual criminal responsibility rather than State responsibility¹².

7. The State further submits that the petitioners have failed to pursue the adequate and effective remedy of constitutional relief for the alleged deficiencies in the investigation and prosecution of those responsible for the death of Mr. Hill, rendering inadmissible any claim that the criminal justice process was defective. The State indicates that the Jamaican courts are empowered to determine if the State has breached the duty to adequately investigate and prosecute; a declaration of the breach and/or compensation would constitute an adequate remedy. Additionally, such remedies are effective and adhere to due process guarantees, including safeguards for judicial independence and impartiality.

8. Finally, the State alleges that there is no *prima facie* case for the claim that the State has failed to adequately pursue the criminal justice process. The petition does not aver that any alleged deficiency within the pre-trial investigation undermined the State's ability to clarify the material facts or secure any essential evidence, and the alleged defects in the investigation identified by the petitioners are groundless. In addition, the State submits that the petitioner's allegation of an inordinate delay in the trial is manifestly groundless. The alleged victims lack any right to have third parties prosecuted and tried for crimes, including within any timeframe; it is left solely to the accused, Sergeant Reid, to vindicate the right to be tried without undue delay if he believes it to be violated¹³. The State notes that the IACtHR declared that the State has a duty to ensure, within a reasonable time, the right of victims and their next of kin to learn the truth about what happened and for those responsible to be punished¹⁴. The petitioners have not alleged that essential evidence had not been secured, or that a fair trial is no longer possible or that the State would not be able to ensure a fair and impartial determination and punishment of those responsible for committing a crime. Finally, the State indicates that despite the trial of Sergeant Reid being scheduled for October 10, 2020, since 2019, Sergeant Reid has been missing – since a fair trial requires the presence of the accused, the trial cannot proceed.

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

9. The petitioners submit that the State failed to meet its duty to conduct an effective investigation and prosecution following the killing of Mr. Hill, leaving the crime in impunity. They argue that the criminal prosecution was inadequate and that there have been unwarranted delays in the prosecution, with no trial date set over ten years after the facts. Accordingly, the exception set forth in Article 46.2.c of the Convention would be applicable. For its part, the State submits that the complaint of the alleged extra-judicial has resolved or adequately redressed through a ruling on compensation, and, alternatively, that there has been a failure by the petitioners to exhaust domestic remedies for the alleged failure of the State to adequately pursue the criminal justice process.

10. With respect to the State's argument regarding the resolution of the complaint 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 punishment¹⁵. 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

¹² The State refers to Marino López and others (Operación Génesis), Colombia, Petition 499-04, Inter-Am. C.H.R., Report No. 86/06, October 21, 2006, para. 57

¹³ The State indicates that an appropriate remedy for a breach of reasonable time guarantee may be a stay of the proceedings – a remedy which is not likely to align with the interest of alleged victims. Further, the requirement that criminal trials must be held without undue delay is not a necessary corollary of the duty to prosecute and punish, a duty the alleged victims have a legitimate interest in. This is manifest when it is considered that the duty to prosecute and punish is geared towards ensuring those guilty of crimes are appropriately punished. However, this end can be met, even if the trial is not commenced and concluded within a given timeframe. The duty to prosecute and punish does not regulate *per se* how a trial is to be conducted after prosecution and before punishment. While the accused can waive his right to a trial within a reasonable time, the alleged victims cannot.

¹⁴ The States refers to Bulacio v Argentina, Inter-American Court of Human Rights, Judgment of September 18, 2003 (Merits, Reparations and Costs), para. 114.

¹⁵ 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.

the clarification of the facts and, if necessary, individualize and prosecute the people responsible. The Commission holds that in cases such as the present one, civil actions do not redress the main claim made, that is concerning the arbitrary killing of Mr. Hill, followed by the purported failure of due diligence in investigation, prosecution, and punishment of those responsible, together with delay in conducting such process. The Commission observes that in the present case, the State undertook procedures for investigating the killing of the alleged victim and that on February and March 2010, Sergeant Reid was charged with Mickey Hill's murder. The Commission also notes that to the present, ten years after the event, there is still no trial date set and Sergeant Reid is reported missing. The Commission notes that by a 2014 sentence from the Supreme Court, the alleged victims got favorable judgments and compensation was granted for the unlawful killing of the alleged victim. Notwithstanding that the IACHR may consider said payment in a report on the merits, the Commission recalls that in order to determine the admissibility of a petition of this nature, the prior exhaustion of domestic remedies is neither adequate nor necessary, since it is inadequate to obtain a full redress and justice for the family members¹⁶. Based on the above, and taking into account the alleged irregularities in the investigation of this case and the apparent structural defects in investigating and prosecuting extrajudicial execution in Jamaica, the Commission concludes that the exception set forth in Article 46.2(c) of the Convention applies.

11. With respect to the filing deadline, the Commission notes that petition was received on June 21, 2013, that the alleged victim was killed on November 4, 2010, and that to this day, the criminal proceedings are still pending, and that as such the effects of the alleged lack of due process and due diligence in the criminal investigation and prosecution 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

12. 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, leaving the crime in impunity. 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). On the matter, the Commission additionally indicates that it may take into account the compensation granted by the State for the unlawful killing of the alleged victim in the reports on the merit¹⁷.

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; and

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.

¹⁶ IACHR, Report No. 14/17. Admissibility. José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and Families. Colombia. January 27, 2017, par. 7.

¹⁷ IACHR, Report No. 55/08, Petition 532-98. Admissibility. Workers dismissed from Empresa Nacional de Puertos S.A. (ENAPU). Peru. July 24, 2008, para. 46.