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REPORT No. 78/22
PETITION 1082-14
REPORT ON ADMISSIBILITY

ANTHONY SCOTT AND FAMILY
JAMAICA

Approved electronically by the Commission on April 15, 2022.

Cite as: IACHR, Report No. 78/22, Petition 1082-14. Admissibility. Anthony Scott and family. Jamaica. April 15, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioners:	The International Human Rights Center, Loyola Law School, and Jamaicans for Justice
Alleged victim:	Anthony Scott and family
Respondent State:	Jamaica ¹
Rights invoked:	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights ² in relation to its Articles 1(1) and 2

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	July 29, 2014
Additional information received at the stage of initial review:	April 4, 15, 16, 2019
Notification of the petition to the State:	June 4, 2019
State's first response:	November 21, 2019
Additional observations from the petitioner:	May 5, 2020, November 20, 2020
Additional observations from the State:	August 17, 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 (deposit of instrument of ratification made on 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 (right to life), 5 (right to humane treatment), 8 (right to fair trial), and 25 (right to judicial protection) of the American Convention in relation to its Articles 1(1) and 2
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; under the terms of section VI
Timeliness of the petition:	Yes; under the terms of section VI

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure Commissioner Margarett May Macaulay, a Jamaican national, did not participate in the deliberations or decision in this matter.

² Hereinafter "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 claim that Anthony Scott (hereafter "the alleged victim") was fatally shot and killed without justification by a police officer of the Jamaica Constabulary Force (JCF) on October 2, 2003, near the Ascot High School in Greater Portmore, parish of St. Catherine. According to the petitioners, to date, the State has failed to diligently investigate, prosecute and punish the crime. They further allege that this extrajudicial killing falls within a well-documented pattern of hundreds of fatal shootings involving security forces per year, which are rarely --if ever-- investigated adequately or punished by the State.

2. According to police reports, at around 11:30 pm on the night of October 2, 2013, two police officers were on patrol when they observed the alleged victim and another person standing at the Ascot High School gate. The petitioners submit that the police officers characterized the alleged victim and the other individual as "looking suspicious". Subsequently, the officers approached the two men, who, after looking in the direction of the police officers, appeared to briefly converse with each other, before departing in separate directions. The police reports indicate that the officers then followed both persons on the grounds of the school, that one of them then shouted, "Police, don't move!" The reports further state that both men pulled firearms from their waist and opened fire on the police officers, who took cover; only one of them opened fire, since the other feared that he would accidentally his colleague. One of the officers stated that he saw both men run across the school's playing field during the shootout, and that one of them fled the scene while the other collapsed on the playing field while running away.

3. The person who collapsed was the alleged victim, who according to the police reports was lying on his back on the playfield suffering from multiple gunshot wounds. The reports also state that the alleged victim was placed in a police service vehicle and taken to the Spanish Town Hospital, where he was pronounced dead on arrival; and that his body was later transferred to a funeral home in Spanish Town pending a postmortem examination. According to the petitioners, the identity of the other person who fled the scene remains unknown; and that according to the alleged victim's brother, this person was initially willing to come forward but did not because he received death threats from the police. He subsequently vanished, and efforts to find him have been fruitless.

4. With respect to the initial police investigation, the petitioners allege that the hands of the officers involved in the shooting were swabbed for gunpowder residue the night of the shooting, while the alleged victim's hands were swabbed at the Spanish Town funeral home. Ultimately, all swabs were forwarded for analysis to the Government Forensic Laboratory, which concluded that no gunpowder residue was found on anyone's hands. The petitioners take issue with this finding, given the undisputed fact that a police officer fatally shot the alleged victim, and that a ballistic test subsequently confirmed that the firearm used by one of the officers was fired. The police report states that a .380 semi-automatic pistol was found lying beside the alleged victim; that its serial numbers had been erased and was fitted with five live rounds; and that the gun and ammunition, as well as both officers' firearms, were turned over to the Forensic Laboratory for ballistic testing. The ballistic certificate states that both firearms were fired, possibly on the night of the shooting; it also states that firearm used by the other officer was not fired. A ballistics expert later restored the serial number on the gun found next to the alleged victim; however, based on information provided to the petitioners, this firearm's serial number was not traced to ascertain who previously owned it; or whether it was stolen, previously recovered, or used in a crime.

5. A postmortem examination was performed on the alleged victim's body on October 14, 2003, 12 days after the shooting; the Coroner's Act requires that this procedure be done within 48 hours. The petitioners submit that the medical doctor found that that the cause of death was multiple gunshot wounds. According to the postmortem report, the alleged victim received three gunshot wounds, all of which indicated that he was shot from behind⁴. Accordingly, the petitioners submit that these gunshot wounds are inconsistent with the version provided by the police officer that he fired at the alleged victim in self-defense.

⁴ According to the petitioners, one bullet entered the back of the alleged victim's neck, approximately 10 inches below the top of his head, damaging vital blood vessels. Another bullet entered from his abdomen, travelling from back to front, through his abdominal cavity, bowels, liver, diaphragm, right lung, and exited his chest and re-entered his right arm. The third bullet entered from the back of the abdomen and traveled through Mr. Scott's abdominal cavity, bowels, liver, and left lung.

6. The petitioners contend that the State failed to conduct a thorough, prompt, and impartial investigation into the circumstances of alleged victim 's killing; and to diligently and impartially prosecute the police officers involved. On April 14, 2004, the Bureau of Special Investigations (BSI) referred the matter to the Director of Public Prosecutions (DPP) for a ruling⁵. On July 20, 2005, the DPP ruled that the matter should go to the Coroner's Court in St. Catherine for an inquest to be conducted; up to August 2011, no inquest had been initiated or completed, despite multiple requests by the petitioners to the Coroner's Court. The petitioners further indicate that as of August 15, 2011, alleged victim's case was expected to be reassigned to the Special Coroner's Court⁶; however, up to the time of the filing of the petition, this reassignment had not taken place, and the matter remains listed, but uncompleted before the Coroner's Court St. Catherine.

7. The petitioners complain that the fatal shooting of the alleged victim, together with delays and deficiencies in the investigation and judicial processes, are part of a widespread pattern of unlawful killings and impunity documented by various international governmental and non-governmental actors, as well as the government of Jamaica itself. They further contend that it is a well-documented fact that the Jamaican justice system is replete with numerous failings, particularly in cases of excessive force and extrajudicial killings by police officers; most notably, the lack of effective, prompt, and thorough investigations.

8. Up to the filing of the petition more than 10 years had elapsed since the death of the alleged victim, without any resolution by the Jamaican justice system. In this regard, the petitioners reiterate that no inquest had been scheduled or completed by the Coroner's Court or the Special Coroner's Court, despite the State's non-derogable obligation to promptly investigate, prosecute and punish persons liable for the alleged human rights violations. The petitioners contend that given the circumstances of this matter, there has been an unwarranted delay that justifies an exception to requirement to exhaustion of domestic remedies, pursuant to Article 46(2)(c) of the American Convention. Given the foregoing, the petitioners also affirm that the petition was presented within a reasonable period, pursuant to Article 32(2) of the IACHR's Rules of Procedure.

9. The petitioners assert that civil remedies --such as constitutional relief-- are neither adequate nor effective; and that criminal proceedings are the appropriate and effective remedies that need to be exhausted in cases where there has been a violation of the right to life. They also contend that the facts demonstrate an unwarranted delay in rendering a final judgment, for ten years had elapsed between the death of the alleged victim and the reference of his case to the Special Coroner, and a ruling was not issued until three years later. Accordingly, the petitioners reiterate that the petition falls under the exception of Article 46.2(c) of the American Convention. They finally argue that an application to the Supreme Court for an order to compel the Coroner's Court to act is not an adequate remedy because it is a discretionary remedy, and because it shifts the burden of prosecuting the case from the State to the petitioners. In this regard, the petitioners argue that it is not their duty to force the State to conduct a proper investigation.

10. The State submits that the petition is inadmissible for failure to exhaust domestic remedies to redress the alleged violations. The State also contends that the allegation that it has not fulfilled its duty to investigate and prosecute the matter is manifestly groundless.

11. With respect to the issue of domestic remedies, Jamaica contends that the petitioners have not exhausted civil proceedings in the form of constitutional relief. It points to Section 19(1) of the Constitution of Jamaica, which recognizes the rights of persons to approach the Supreme Court for redress for human rights violations; and that these include violations of the right to life, and the right not to be subjected to cruel and inhumane treatment. It further alleges that civil proceedings can adequately address alleged human rights violations as they allow the facts to be ventilated by assessing the State's responsibility for human rights violations; and provides for compensation, which is an adequate form of relief.

⁵ At the time of the death of the alleged victim, the BSI was an agency of the JCF responsible for investigating fatal shootings by the police. In August 2010 Parliament established the Independent Commission of Investigations (INDECOM), which has now largely taken over this role from the BSI.

⁶ The Special Coroner's Court was created to deal specifically with cases where a death occurred due to actions of State agents.

12. The State takes note of the traditional position of the IACHR on the primacy of criminal proceedings --as opposed to civil remedies-- in clarifying the facts, apportioning criminal responsibility, and applying sanctions where appropriate. However, it invites the Inter-American Commission to depart from its previously held position, as applied to Jamaica, insofar as suggesting that civil remedies are inadequate or ineffective remedies for alleged breaches of non-derogable rights. Accordingly, it submits that civil proceedings constitute an adequate and effective remedy and must be pursued by the petitioners regardless of whether the State has failed to adequately pursue the criminal process.

13. Contrary to the petitioners' claims, the State contends that it conducted an adequate and effective criminal investigation into the alleged human rights violations committed against the alleged victim, and that there was no unwarranted delay in completing this investigation. In this regard, Jamaica submits that the hands of the police officers involved in the shooting were swabbed for gunpowder residue on the night of the shooting; that the investigation indicated that there was no presence of gunshot residue on the hands of the policemen; and that there was also no independent eyewitness to negate the assertions made by the police officers that they acted in self-defense. Accordingly, the State notes that the DPP ruled on July 20, 2005, that there was insufficient evidence to initiate proceedings against the alleged perpetrators and referred the matter to the Coroner for an inquest to be held. The State affirms the matter was thereafter sent to the Special Coroner on November 21, 2013; on February 29, 2016, this official found no person criminally responsible for the death of the alleged victim. It further contends that while the delay is regrettable, the Special Coroner's completion of the inquest resolves the petitioners' complaint regarding the failure to hold an inquest. It also argues that the delay in holding the inquest did not impair the effectiveness of the proceedings. Accordingly, it asserts that the allegation concerning the failure to conduct the inquest is manifestly groundless.

14. Additionally, Jamaica holds that there is an adequate and effective remedy available to the petitioners under Section 21 of the Coroners Act, which permits a judge of the Supreme Court to quash and order a new inquest if "by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, or any other circumstances or considerations, whether similar to the foregoing or not, it is necessary or desirable in the interests of justice, that another inquest should be held." The State argues that the petitioners failed to exhaust this remedy, and that this is an additional basis to find the petition inadmissible.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS

15. The State contends that the petitioners failed to exhaust available civil remedies, which are adequate and effective and must be pursued regardless of whether the State has failed to adequately pursue criminal proceedings. On the other hand, the petitioners claim that the circumstances of this matter warrant an exception to the requirement of exhaustion.

16. Regarding the lack of exhaustion in the form of civil redress, the IACHR reiterates that in cases like this, it is not necessary to exhaust civil action before resorting to the inter-American system. This is because that remedy would not redress the main claim concerning the alleged homicide by police officers, followed by the failure of due diligence in investigation, prosecution, and punishment of those responsible, together with its delay. The Inter-American Commission reiterates that under international standards applicable to matters like this one, where serious human rights violations such as homicide are alleged, the appropriate and effective remedy is precisely an effective criminal investigation aimed at the clarification of the facts and, if necessary, the individualization and prosecution of the persons responsible.

17. However, when studying the merits, the Commission will analyze the effectiveness of civil redress and, if applicable, the impact that the lack of exhaustion of civil remedies might have on the claims for reparation. Based on the record, the IACHR notes that an inquest by the Special Coroner was not completed until 13 years after the death of the alleged victim.

18. The Commission does not accept the State's contention that petitioners are obliged to apply to the Supreme Court for an order to review the decision of the Special Coroner's Court, because the burden of conducting a criminal investigation falls upon the State.

19. In view of the foregoing, 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. In view of the context and elements of the petition, the Inter-American Commission considers that it petition was filed within a reasonable period pursuant to Article 32(2) of its Rules of Procedure.

VII. COLORABLE CLAIM

20. The petition contains allegations regarding the extrajudicial killing of the alleged victim; delays amounting to more than a decade; and critical deficiencies in the relevant investigative and judicial processes. The IACHR notes that the State does not ultimately dispute the delay in the initiation or completion of the Special Coroner's inquest; and that despite the conclusion of this inquest, there has been no clarification by it regarding the facts leading to the homicide of the alleged victim.

21. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR concludes that the allegations concerning the alleged extrajudicial killing and the delays in investigation and judicial criminal proceedings are not manifestly unfounded. Accordingly, the Commission considers that the alleged facts, if proved, could establish violations of the rights recognized by Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of the alleged victim and his surviving family.

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 15th day of the month of April, 2022. (Signed:) Julissa Mantilla Falcón, President; Joel Hernández, Roberta Clarke, and Carlos Bernal Pulido, Commissioners.