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REPORT No. 350/20
PETITION 1909-15
REPORT ON ADMISSIBILITY

CHRISTOPHER WILTSHIRE
JAMAICA

Approved electronically by the Commission on November 24, 2020.

Cite as: IACHR, Report No. 350/20, Petition 1909-15. Admissibility. Christopher Wiltshire. Jamaica. November 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Christopher Wiltshire
Alleged victim:	Christopher Wiltshire
Respondent State:	Jamaica ¹
Rights invoked:	None

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 10, 2015
Additional information received at the stage of initial review:	March 7, 2017
Notification of the petition to the State:	April 23, 2019
State's first response:	February 20, 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 Convention on Human Rights ³ 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 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the 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, in terms of Section VI
Timeliness of the petition:	Yes, November 10, 2015

V. ALLEGED FACTS

1. The alleged victim and petitioner, Christopher Wilshire, is deprived of liberty at the St. Catherine Adult Correctional Facility. He alleges that he was sentenced to a disproportionate death penalty sentence for a crime he did not commit; that the Jamaican judiciary took an excessive nine years to comply with a Privy Council ruling that quashed his death penalty sentence which resulted in him spending an excessive time on death row; and that his revised sentence is unjust and unnecessarily harsh. He finally claims that his privately retained counsel was ineffective.

2. The petitioner indicates he was arrested on October 1997 and that on January 28, 2000 he was sentenced to death after being convicted of the murder of three persons in the course or furtherance of burglary and robbery, a non-capital crime according to the petitioner. He challenged his conviction before the Court of Appeal, which dismissed the appeal on November 15, 2001. He submits that in 2006 the Privy Council ordered the death sentence quashed, based on the *Lambert Watson* ruling making mandatory death penalty unconstitutional; and that the case be remitted to the Jamaican Supreme Court for consideration of the appropriate sentence in a timely manner. However, he alleges that he was not re-sentenced until October 2, 2015, to a sentence of life imprisonment on each count of murder, to run concurrently, without possibility of parole before 35 years. The petitioner claims that his appeal was pushed aside and left hanging for nine years

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

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

because of administrative blunder, period of time that he spent on the death row, in addition to the initial 6 years. He additionally claims that the new sentence is unjust and unnecessarily harsh, taking into account that he had already been in custody for 15 years.

3. The petitioner alleges irregularities and mistreatment in the course of the investigation and his detention. He claims that the arresting officer, who was also the investigating officer, never issued a warrant for his arrest despite knowing where he lived; claiming that he only got arrested long after, on a different matter for which he was never charged with. The petitioner additionally alleges that he was denied a fair trial in a reasonable time, and never went through any preliminary enquiry hearing. He claims that the ballistic expert declared that the name of the alleged victim did not figure in the report sent to him. He claims that he was exposed to the witnesses before the trial, including when he was entering the Kingston Home Circuit Court on the day of its trial. He asserts that some witnesses claim to have identified him by the scar or chop he had in his face during the trial; however, that scar or chop happened at the time of his arrest (for which he could not get proper treatment before being brought back to the police station) – and not before. The petitioner additionally alleges that he was hit by police officers on October 1998 and December 1999, and had to be taken to the hospital both times. He submits that he also suffered mistreatment and abuse while on death row, including a broken nose that was never properly cured.

4. For its part, the State submits that the petition is inadmissible for failure to exhaust domestic remedies, failing to present the petition to the Commission in a timely manner and lack of characterization. The State claims that the petitioner has not shown that he exhausted local remedies in relation to his claims of pre-conviction physical abuse by the State. The State submits that such acts could constitute civil wrong of assault and battery, and that the petitioner should alternatively have sought to initiate constitutional proceedings on the ground that his right to be free from inhuman and degrading treatment was violated. Both remedies are adequate and effective, as they allow for the determination of the State's liability and for the determination of the right compensation. The State further contends that the petitioner did not exhaust domestic remedies regarding the allegedly excessive delay in convening a re-sentencing hearing and the allegedly excessive re-sentencing order. The petitioner had the right to seek a leave to the Court of Appeal against the sentence received in 2015. Further, the Constitution recognizes the right to a fair hearing within a reasonable time, and thus the petitioner could have made a constitutional claim before the Supreme Court to allege that this right was breached as the re-sentencing hearing was not convened within a reasonable time.

5. Alternatively, the State submits that the petition is inadmissible based on the time of presentation to the Commission. The petitioner's claims of pre-conviction physical abuse were not made within a reasonable time, since the petitioner first communicated his complaints regarding these abuses to the IACHR in 2017, whereas the alleged facts took place prior to 2000, a 17-year delay. Additionally, the State submits that the petitioner's complaints concerning his trial are time-barred, as they have been made in excess of six months after challenging his conviction before local courts, which was issued in 2000. Additionally, the Judicial Committee of the Privy Council ruled in favor of the petitioner in 2006, that is 9 years before the petitioner submitted his complaint to the IACHR.

6. The State further contends that the petitioner's claim that his new sentence is excessive or unjust does not concern an arguable violation of a human right in the American Convention. It is left to national authorities to determine the appropriate sentence for a criminal offence, and barring special circumstances, it is outside the scope of the Commission's competence to impeach sentencing decisions. A judicially imposed life sentence, which provides for the possibility of parole, does not raise a possible violation of a human right to arise. The sentence is adequate reparation for the fact that the petitioner was initially on death row, due to then existing mandatory death sentencing regime, and serves the clear duty of the State to adequately punish grave acts of criminality that violate the right to life⁴.

⁴ The State refers to Case of Dacosta Cadogan v Barbados, Inter-American Court of Human Rights, Judgment (Preliminary Objections, Merits, Reparations and Costs), September 24, 2009, para. 109:

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

7. The Commission notes that the petitioner appealed its conviction and sentence, and that in 2006 the Privy Council ordered that his death sentence be quashed and the case remitted to the Jamaican Supreme Court for consideration of the appropriate sentence. On October 2, 2015, the latter modified the alleged victim's sentence to life imprisonment without parole before 35 years. The Commission concludes that domestic remedies were exhausted with this decision, in accordance with the requirement set forth in Article 46.1.a of the Convention. The State submits that the petitioner could have made a constitutional claim before the Supreme Court alleging that the re-sentencing hearing was not convened within a reasonable time. However, the Commission recalls that, in principle, it is not necessary to exhaust extraordinary remedies; and observes that in this case, it was the responsibility of the Supreme Court to issue its decision in a reasonable time. The determination of whether the judicial process amounted to violations of the American Convention will be analyzed in the report on the merits. Finally, concerning the allegation of mistreatment, the Commission notes that the attacks against the alleged victim's integrity were known or should have been known by the authorities, since the alleged victim was taken to the hospital by police officers and prison authorities on more than one occasion. In these circumstances, the IACHR considers that the authorities were aware of the situation of the alleged victim, and that he invoked the remedies readily available to him as a practical matter; accordingly, the requirements of Article 46 are satisfied.⁵

8. As regards timeliness, the Commission notes that the decision exhausting the domestic remedies was issued on October 2, 2015, and that the petition was submitted on November 10, 2015, thus complying with the requirement set forth in Article 46.1.b of the Convention. The Commission takes note of the argument of the State concerning the untimeliness of the petition, but concludes that the elements submitted by the petitioner, concerning facts taking place between 1997 and 2015, all are part of the same continuous set of events, for which the domestic remedies were exhausted on October 2, 2015.

VII. ANALYSIS OF COLORABLE CLAIM

9. The Commission notes that the petitioner alleges violations to the right to a fair trial, notably in the form of a unreasonable delay of a final decision by the Supreme Court of Jamaica, which caused the alleged victim to spend 15 years on death row, including nine years after the original sentence had been quashed; he also claims mistreatment by police officers and prison guards while in custody of the State. 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, if corroborated as certain, could characterize violations of Articles 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).

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 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 24th day of the month of November, 2020. (Signed:) Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; and Julissa Mantilla Falcón, Commissioners.

⁵ IACHR, Report No. 20/17, Petition 1500-08. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017; ACHR, Report No. 89/17. Petition 788-08. Admissibility. Curtis Armstrong A.K.A. Tyrone Traill. Jamaica. July 7, 2017.