

OEA/Ser.L/V/II
Doc. 73
9 March 2021
Original: English

REPORT No. 68/21
PETITION 1080-14
REPORT ON ADMISSIBILITY

OMAR EVANS AND FAMILY
JAMAICA

Approved electronically by the Commission on March 9, 2021.

Cite as: IACHR, Report No. 68/21, Petition 1080-14. Admissibility. Omar Evans and family. Jamaica. March 9, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	International Human Rights Clinic, Loyola Law School, Los Angeles and Jamaicans for Justice
Alleged victim:	Omar Evans and family
Respondent State:	Jamaica ¹
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention on Human Rights ² , and Articles 1.1 (Obligation To Respect Rights) and 2 (Domestic Legal Effects) of the same instrument

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	July 29, 2014
Additional information received at the stage of initial review:	April 16, 2019
Notification of the petition to the State:	June 4, 2019
State's first response:	December 17, 2019
Additional observations from the petitioner:	May 5, 2020. November 20, 2020
Additional observations from the State:	August 29, 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 (Life), 5 (Humane Treatment), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention on Human Rights ⁴ , and Articles 1.1 (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:	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 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.

⁴ Hereinafter "the American Convention" or "the Convention".

V. ALLEGED FACTS

1. The petitioners allege the State responsibility for the extrajudicial execution of alleged victim Omar Evans, as well as the lack of due diligence in the investigation of the facts, plus violations of the rights to judicial guarantees and judicial protection, which resulted in the lack of reparations and compensation to the alleged victim's next of kin. They further submit that Omar Evans's extrajudicial killing and the subsequent failure of the State to diligently investigate, prosecute and punish the crime, fall within a well-documented pattern of fatal police shootings, which enjoy virtually absolute impunity. The petitioners also state that Omar Evans' death and his family's intense suffering is the result of deficient investigative, prosecutorial and judicial action that operated in tandem to shield police from accountability, and in this case led to an avoidable injustice.

2. According to the petitioners, Omar Evans was a 27-year-old welder employed at the Jose Marti High School, was shot and killed by two Jamaican Constabulary Force (JCF) officers on September 19, 2001 in Central Village in the parish of St Catherine where he was working on a construction site at said school. Eyewitness accounts said that a JCF vehicle arrived at the High School and that its officers surrounded the campus, and that subsequently one of them said to Mr. Evans "Matthew, don't move"; however, Mr. Evans ran away and hid in a cellar. They add that the officer and a colleague followed the alleged victim to the cellar and opened fire, they then dragged Mr. Evans from the cellar, produced a gun, and fired two shots into the air. Mr. Evans was subsequently taken to the Spanish Town hospital, where he was declared dead. The petitioners submit that the security guard at the High School, another eyewitness, confirmed that four officers had shot into the cellar of the building and that Evans' body was drawn out with gunshots everywhere. The post mortem report indicated that Omar Evans was shot 11 times.

3. Additionally, an eyewitness indicated that one of the officers came from under the cellar with a gun and said that it was taken from Mr. Evans' right hand. On September 26, 2001, seven days after the incident, the Forensic Laboratory in Kingston, Jamaica, received swabs taken from Mr. Evans' hands. The results showed that there was gun residue in the palm of his left hand and that no residue was found in his right hand, which directly contradicts the statements of the JCF officers. In addition, the petitioners allege that -- contrary to eyewitness testimonies-- the JCF officers' statements indicated that Omar Evans was shot during a shootout with gunmen and that the police were shooting in self-defense. In this regard, the petitioners emphasize that the Ballistics Expert Report analyzed four guns and found that three of them were fired. They submit that it is unclear whether one of these guns was the one claimed to be found in Omar Evans' hand, or which one it was; they assert that this is an issue of particular importance since one of the guns was found not to have been fired. The petitioners point out that the report further stated that a badly damaged lead bullet and another piece of a copper lead bullet were recovered among a number of pieces of evidence from the scene. Given the police allegation that this was a shootout between two officers and several armed men, the petitioners stress that no other casings from any other location were recovered from the scene to corroborate this version of events of a shootout with multiple gunmen.

4. The petitioners also denounced irregularities in the handling of evidence and in the investigation overall. They point out that the haste with which Omar Evans' body was removed from the cellar prevented vital evidence such as photographs or other records of the positioning of the body and the proper marking and collection of physical evidence such as the bullet casings or guns. In addition, they note that it does not appear that the firearm claimed to have found in Omar Evans' hand was tested for fingerprints. Further, the petitioners assert that an autopsy was not performed on the alleged victim's body until 15 days after his death contrary to Jamaica's own domestic standards, which set a limit of 48 hours for it to be carried out. They further allege that all these factors prove that State agents impeded the proper investigation of this JCF killing. They submit that these investigative deficiencies, marred by corruption and bias, have crippled the criminal proceedings to such an extent that they cannot constitute an effective recourse.

5. They also contend that in light of the extensive data confirming the ineffectiveness of the criminal justice system in Jamaica, especially with respect to unlawful police killings, the internal remedies are not an adequate response to the serious violations of human rights suffered by the alleged victims. The petitioners refer to several reports that highlight almost absolute impunity for unlawful police killings in

Jamaica and that denounce a pattern of disproportionately large number of killings by State security forces, where very few prosecutions have been undertaken in relation to those killings.⁵

6. On September 20, 2001, Omar Evans' brother submitted a claim to the Police Public Complaints Authority against three JCF officers. The Bureau of Special Investigation (BSI) took almost two years to investigate the matter, and it did not send Mr. Evans' case to the Director of Public Prosecutions (DPP) until 28 February 2003. The DPP then brought the case to the Coroner's Court on February 6, 2009, that is, almost 9 years after the incident. The petitioners submit that, despite numerous requests throughout the years for information about Omar Evans' case, State authorities failed to inform the family of the alleged victim or the petitioners whether any progress had been made on the prosecution. The petitioners learned from the State's response to the Commission in 2019, that an inquiry into the matter was finally held by the Special Coroner's Court in 2015 --that is, over 14 years after Omar Evans' death--, which concluded on 28 August 2015 with a determination that "no one was criminally responsible for the death of Omar Evans". They submit that the investigation and subsequent prosecution for Omar Evans' shooting has been marred by improper conduct and unwarranted delays that severely limit its effectiveness. They emphasize that to date (November 2020), it is not yet clear what happened and why Omar Evans was killed. Petitioners claim that the tampering with evidence combined with a failure to thoroughly investigate the events of that day and pursue all likely theories of culpability has resulted in a grave perversion of justice.

7. The State, in turn, claims that the petition should be declared inadmissible due to lack of exhaustion of domestic remedies both with regard to the criminal and civil proceedings. Concerning the duty to investigate and the alleged defects in the police investigation and delays, the State indicates that on August 28, 2015, the Special Coroners Court completed an inquest in which it concluded that no one was criminally responsible in the death of Omar Evans. Further, the State argues that petitioners may apply to a Judge of the Supreme Court, pursuant to Section 21 of the Coroners Act, seeking an order for a fresh inquest to be held on the ground that it is necessary or desirable in the interests of justice. The State asserts that this remedy, in addition to a constitutional claim, can address any alleged significant defect in the investigation process or verdict of the Special Coroner. Thus, the State stresses the absence of a pursuit of the domestic remedies described above.

8. The State also indicates that section 19(1) of the Constitution of Jamaica recognizes the right of persons to approach the Supreme Court of Jamaica to seek redress for human rights violations. These include alleged violations of the right to life and the right not to be subjected to cruel and inhumane treatment. Thus, it is submitted that civil proceedings, in the form of constitutional relief, are adequate and effective remedies for an alleged unlawful killing by the State. The Government 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 State⁶; 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. The Further, the States argues that civil proceedings are the remedy to be exhausted for two reasons: it can examine the substance of the complaint, *i.e.* the State's responsibility for the violation of human rights; and it allows for an order of compensation, which is an adequate form of relief. Hence, the State argues that it the petitioners had civil proceedings for compensation available, which they failed to pursue. In this regard, the State also emphasizes that this remedy is effective for redressing the complaints raised in the petition. In this regard, the State also submits that civil proceedings must be pursued irrespective of the allegations of failure to adequately pursue the criminal process.

9. Furthermore, the State contends that the allegation that civil proceeding failed to adequately investigate and prosecute is manifestly groundless. The Government submits that any such claim is subject to the exhaustion rule and thus cannot be examine unless local remedies have been exhausted, which for the State in this case petitioners have failed to do so. For the State, the petitioner's argument that Constitutional relief

⁵ IACHR, Report on the Situation of Human Rights in Jamaica, OEA/Ser.L/V/II.144 Doc. 12, U42 (Aug. 10, 2012), par. 94-95. Amnesty Int'l, Jamaica: A Long Road to Justice? Human Rights Violations Under the State of Emergency, AMR38/002/2011, 9 (2011).

⁶ The States 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).

can only provide monetary compensation, thus it is inadequate. This is incorrect. Constitutional relief provides the ability to receive any appropriate form of relief for an established human rights violation. This includes, but it is not limited, to compensation. For example, Constitutional relief also offers as a form of reparation, the possibility for orders to State agents to fulfil the duty to investigate, where there is any breach and 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, for the State it was and is for the petitioners to make an application to de Supreme Court for constitutional relief, to allow the examination as to whether the government has fulfilled its duty to investigate and to gain appropriate relief.

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

10. The petitioners indicate that they have exhausted the domestic remedies available to them, but that the unwarranted delays, coupled with the irregularities in the investigation, severely limit its effectiveness of the system of justice. Therefore, they allege that in cases such as the instant one, it is the duty of the State to promote and advance the investigation. On the other hand, the State rejects the petition as inadmissible primarily because, the State asserts that it did undertake a criminal investigation and prosecution into Mr. Evans's death. In the second place, it asserts that the petitioners have failed to exhaust domestic remedies because they did not initiate civil proceedings for compensation, which were at their disposal. The State submits that this remedy is effective for redressing the complaints raised in the petition.

11. 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 punishment⁷. 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 notes that in this case there has been unwarranted delay in rendering a final judgment. Omar Evans was killed more than 19 years ago, and the petitioners allege that the investigation into the crime was highly deficient and marred by mishandling of evidence and ambiguities; this was not substantially controverted by the State. The case moved very slowly in the judicial system for over 14 years, until 28 August 2015 when the Special Coroners Court concluded that no one was criminally responsible for the death of Omar Evans.

12. The Commission, also, has consistently held that it is not necessary in such cases as this to exhaust civil actions before resorting to the inter-American system, since those remedies would not redress the main claim. 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.

13. In view of the foregoing, and in light of the information presented, the Commission concludes that the State has denied the petitioners access to, or has prevented them from exhausting domestic remedies. Therefore,

⁷ IACHR, Report No. 87/08, Petition 558-05. Admissibility. Jeremy Smith. Jamaica. October 30, 2008, par. 36.

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.⁸

14. With respect to the requisite of timeliness, the Commission notes that the petition was received on July 29, 2014 and that the facts of the claim began on September 19, 2001, and its effects would extend to date. Accordingly, the IACHR finds that the petition was filed within a reasonable time and that the timeliness requisite is satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

15. The Commission notes that the petition includes allegations regarding the extrajudicial killing of Mr. Evans; long delays lasting up to 15 years as well as other critical deficiencies in the investigative and judicial processes that ensued following the death of Mr. Evans, within a context of impunity related to excessive use of force by security forces in Jamaica.

16. 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 believes that the allegations concerning the extrajudicial execution; the delays in the investigation; the exclusion of relevant evidence in the criminal trial; and the alleged failure of the State to take measures to protect Mr. Evans' rights are not manifestly unfounded and require a further study at the merit stage. The alleged facts, if proved, could establish violations of the rights recognized in Articles 4 (life), 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) thereof, to the detriment of Mr. Evans 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 Articles 1(1) and 2 thereof; 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 9th day of the month of March, 2021. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁸ IACHR, Report N^o 8/03 Petition 191/02 ADMISSIBILITY MICHAEL GAYLE, Jamaica February 20, 2003 [Http://Cidh.Org/Annualrep/2003eng/Jamaica.191.02.Htm](http://Cidh.Org/Annualrep/2003eng/Jamaica.191.02.Htm)