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REPORT No. 112/19
PETITION 973-09
REPORT ON ADMISSIBILITY

JANICE ALLEN AND FAMILY
JAMAICA

Approved electronically by the Commission on June 10, 2019.

Cite as: IACHR, Report No. 112/19, Petition 973-09. Admissibility. Janice and Family. Jamaica.
June 10, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jamaicans for Justice (JFJ) and International Human Rights Clinic at the George Washington University Law School
Alleged victim:	Janice Allen and family ¹
Respondent State:	Jamaica ²
Rights invoked:	Articles 4 (right to life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to its Articles 1(1) and 2

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	August 5, 2009
Notification of the petition to the State:	June 7, 2013
State's first response:	September 9, 2013
Additional observations from the petitioner:	December 6, 2013
Additional observations from the State:	February 18, 2014
Notification of the possible archiving of the petition:	October 26, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	December 13, 2017

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 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (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 (March 19, 2009)
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. The Petitioners allege that Janice Allen (hereinafter "Ms. Allen" or "the alleged victim"), aged 13, was shot and killed by Rohan Allen (of no relation to the alleged victim), who was a Police Officer of the

¹ The Petition identifies Millicent Forbes, Mother; Ann Marie Allen, sister; and Andre Lindo, brother.

² In keeping with Article 17(2)(a) of the Commission's Rules of Procedure Commissioner Margarete 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.

Jamaican Constabulary Force (hereinafter "JFC"), on 14 April 2000. It is stated that Janice Allen'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. Petitioners state that Janice Allen's death and her family's, intense suffering are the result of deficient investigatory, prosecutorial and judicial action that operated in tandem to shield police from accountability, and in this case led to an evitable miscarriage of justice.

2. Petitioners allege that Janice Allen was the undisputed victim of a police killing. Her sister, Ann Marie Allen, aged 17, was with the alleged victim at the time of her death and witnessed the act. They went to buy food and stopped to talk with friends. They saw police vehicles and when they heard shots being fired, they got down and lay flat on the road; however, when the shooting stopped Janice got up and ran to safety. It is stated that her sister, Ann Marie, saw a police man stand up and shoot directly at her. It is further indicated that the members of the JFC present on the scene of the incident refused to take the alleged victim to the hospital telling Anne Marie that they "did not want Janice's blood to get on their car" despite her pleading. The Police allegedly did not take any measures to help Ms. Allen and it is further claimed that it was over half an hour before a civilian in the area agreed to assist and transport the alleged victim to the hospital; Ms. Allen however died on route.

3. It is stated that a postmortem examination was performed and confirmed cause of death due to gunshot wound to the chest, with entrance present on the back. Petitioners sustain that, even though the pellets recovered from the alleged victim's body were found to match the firearm issued to Officer Rohan Allen on the day of the incident, and that Rohan Allen gave a statement admitting he was armed with that gun, the investigation and prosecution were unable to establish who issued the firearm and confirm that the weapon was issued to the alleged perpetrator, because the supporting documentation disappeared.

4. The petitioners sustain that another civilian who witnessed the incident was held in detention for 13 months after being charged with "gun crimes" upon an allegation by police that a gun was found on the witness at the scene of the incident and that the witness was involved in the shoot-out. After the witness was acquitted and released from jail, the police failed to take a statement from him; and did not interrogate or identify any other witnesses.

5. It is alleged that one week prior to and subsequent to the trial, Ms. Millicent Forbes (Janice's mother) and her family were harassed by the actions of threats, attempts at bribery and the arrest of the alleged victim's brother, Andre Lindo. Andre Lindo, aged 19 was arrested on May 14, 2001 and detained overnight, without reason communicated and later released without charge after an alleged outcry from human rights groups. It is asserted that Anne Marie Allen, the sister of Andre Lindo and the alleged victim, saw her brother being arrested and went to the police station to enquire about his arrest, but was verbally abused with threats of injury to her person and on the lives of her family. It is claimed that Ms. Forbes also tried to inquire about her son's whereabouts and detention; however, she was not given information by the officers at the police station. Ms. Forbes was also allegedly offered money on two occasions; the first on May 18, 2001 made by police men allegedly on behalf of the alleged perpetrator, in the sum of \$150,000 to not pursue the case; and the second by an alleged gang leader in the community to the sum of \$125,000; both of which she refused. The acts, the petitioners claim intimidated the family but they pursued the case.

6. It is alleged that at the preliminary inquiry on June 26, 2001, there were several delays amounting to over 15 adjournments before the end of November 2002, caused by; failure to subpoena witnesses; missing exhibits resulting in the expert witness being unable to testify; and failing to produce missing pages from the firearm register. Within the Circuit Court, it is asserted that the trial was set for March 15, 2004 after 5 adjournments, and that the Prosecutor explained to the court that due to evidentiary obstacles, no evidence could be offered against the Defendant; and requested that the trial Judge direct the jury to return a formal verdict of not guilty.

7. The petitioners allege that there were several inadequacies and failures in the investigation of the death of the alleged victim, to the extent of thwarting effective judicial process, impartial prosecution and weakening the case, if not failing it. Some inadequacies listed were; the failure to conduct an identification

parade of suspects; the delay in obtaining witness statements; and the disappearance of the station diary with respect to date and incident of killing, which was recovered 9 years after the incident. In particular, it is asserted that after postmortem examination, it is reported that the pellets recovered from the victim's body matched the forearm issued to the accused Officer, however the supporting evidential documents allegedly disappeared. It is further claimed that there was no avenue for accountability for prosecutorial misconduct or transgressions of basic due process guarantees. Also, they assert that the key witness returned to the State two days after the trial.

8. On July 12, 2004, Ms. Forbes sought leave for judicial review on the grounds that the acquittal was obtained by fraud upon the Department of Public Prosecution (DPP) and the Court; and that the administration of justice was perverted. The Supreme Court however dismissed the application on October 1, 2004 stating that the jury verdict was not amenable to judicial review; further that the jurisdiction of a superior court could not be reviewed by a Court of equal jurisdiction; and on February 24, 2005, the application for judicial review was refused.

9. On March 7, 2005, Ms. Forbes filed a notice of appeal to the Court of Appeal, however the Court upheld the previous ruling, explaining that the verdict was not amenable to judicial review. The matter was appealed to the Final Court of Appeal, that of the Privy Council, which in its judgment of March 19, 2009, dismissed the claim upholding that judicial review was not an appropriate remedy. The court decided however that it was for the DPP to decide whether to re-indict the accused Officer and additionally submit that the accused was not entitled to plead *autrefois acquit* as a defense in the circumstances of the case. The court explained that the DPP's decision would "in principle be subject to judicial review". The petitioners assert that on April 30, 2009, the DPP decided not to re-indict the Officer who allegedly killed the victim.

10. The State concedes that criminal domestic remedies were effectively pursued and exhausted and have yielded adequate result, therefore the petition should not be held admissible to the international human rights system as this would undermine the principle of the subsidiary role of the international human rights body, and would improperly convert the Commission to a Court of Fourth Instance. Further, the State submits that the criminal remedies were adequate and effective irrespective of the lack of desired outcome for the alleged victim.

11. The State provides that there are also domestic remedies in the form of civil and constitutional redress that the alleged victims were required to exhaust before the presentation of the petition and in this manner have failed to comply with the time period for the presentation of the petition. Moreover, the State alleges that a civil suit was filed by Janice's relatives on July 19, 2007 and compensation was settled with the Government.

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

12. The Commission notes that petitioners and State agree that criminal domestic remedies were effectively pursued and exhausted.

13. With regards to the State's argument regarding the lack of exhaustion in the form of civil redress, the Commission reiterates that in cases like this, it is not necessary to exhaust civil action before going to the Inter-American system, since that remedy would not respond to the main claim made in the petition concerning the alleged arbitrary killing of Ms. Allen, followed by breach of due diligence in investigation, prosecution, and punishment of those responsible as well as the alleged lack of measures to positively protect her. In this regard, and taking into account that the facts alleged by the petitioners constitute crimes that are prosecutable *ex officio*, the domestic remedy that needed to be exhausted in the instant case is the official criminal investigation by the State.⁵

⁵ IACHR, Report No. 19/16, Petition 3546-02. Admissibility. Galo Roberto Matute Robles and Family. Ecuador. April 15, 2016.

14. The petition was filed on August 5th 2009, and therefore was filed within six months of Ms. Forbes being notified of her last attempt at recourse through the domestic legal system. The petition therefore was filed within the six month requirement.

15. In view of these considerations, and the information present in the dossier of the petition, the Inter-American Commission considers that this petition complies with the requirement of exhaustion of the internal remedies under the terms of article 46 of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

16. Regarding the State's pleadings on the doctrine of fourth instance, the Commission recognizes that it cannot serve as an appellate court to examine alleged errors of internal law or fact which may have been committed by the domestic courts acting within their jurisdiction. However, within its mandate to ensure the observance of the rights set forth in the American Convention, the Commission is necessarily competent to declare a petition admissible and rule on its merits when it refers to a domestic legal decision ruled in violation of any right protected by the American Convention⁶.

17. 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 purported extrajudicial execution, cruel and inhumane neglect of the Police force; the grief, harassment and distress of family members caused by the incidents and failures of due process in subsequent judicial procedures and the alleged failure of the State to take measures to protect Janice Allen's rights as a Child, if proved, all could establish violations of the rights enshrined in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) 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, 19 and 25 of the American Convention in relation to its Articles 1(1) and 2;

2. to notify the parties of this decision;

3. to continue with the analysis on the merits; and

4. 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 10th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁶ IACHR, Report No. 42/08, Petition 1271-04. Admissibility. Karen Atala and Daughters. Chile. July 23, 2008, para. 59