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REPORT No. 104/20
PETITION 1178-10
REPORT ON ADMISSIBILITY

AMANIE WEDDERBURN, ERIC WEDDERBURN AND FAMILY
JAMAICA

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 104/20, Petition 1178-10. Admissibility. Amanie Wedderburn, Eric Wedderburn and family. Jamaica. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioners	Arturo Carrillo and Carolyn Gomes
Alleged victim	Amanie Wedderburn, Eric Wedderburn and family
Respondent State	Jamaica ¹
Rights invoked	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 19 (Rights of the Child) 25 (Judicial Protection) of the American Convention on Human Rights ² , and the 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 20, 2010
Additional information received during initial review	December 17, 2010
Notification of the petition	September 17, 2014
State's first response	December 30, 2014
Additional observations from the petitioner	May 22, 2017
Notification of the possible archiving of the petition	November 16, 2018
Response to the notification regarding the possible archiving of the petition	September 18, 2019

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<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), 19 (Rights of the Child), 25 (Judicial Protection) of the Convention, in connection with Articles 1.1 (Obligation to respect rights) and 2 (Domestic Legal Effects) of the same instrument
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. FACTS ALLEGED

1. The petitioners allege the responsibility of the State for the murders of the alleged victims, Amanie Wedderburn, then a minor, and his uncle Eric Wedderburn, as well as the lack of due diligence in the investigation of the facts, plus violations to judicial guarantees and to the right to judicial protection, which resulted in the lack of reparations and compensation by the State to the alleged victims' next of kin.

2. The petitioners allege that Amanie Wedderburn was 14 years old when he was shot by Constable Vernon Ellis, a member of the Jamaica Constabulary Force, on May 2, 2003. They explain that the alleged victim was out with his friend Tarik Ergas when they were approached by two uniformed police officers,

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 "the American Convention" or "the Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

Corporal Nathaniel Dixon and Constable Winsome Wright. Corporal Dixon allegedly grabbed Tarik by the collar and accused him of having, earlier that same day, troubled a fruit vendor, which he denied. A crowd of people then gathered and many explained to the officers that Tarik wasn't involved in any wrongdoing; this was confirmed by the fruit vendor himself. However, when Tarik swore at the police officers, Corporal Dixon grabbed him again and told him he was taking him to the police station, to which Tarik offered resistance. In the meantime, Constable Vernon Ellis arrived at the scene, where he was updated on the situation. When Constable Ellis tried to pull Tarik into the patrol jeep, grabbing him by the waist, the latter resisted, helped by some of his friends, not including Amanie Wedderburn. Constable Ellis then detonated his firearm towards the crowd of people, which resulted in the death of Amanie Wedderburn, who was hit in the head by the bullet. The crowd then started to throw stones and shells at the officers, who promptly got into their vehicles and drove off.

3. The petitioners indicate that the Bureau of Special Investigations conducted an inquiry into Amanie's death and eventually forwarded the case file to the Coroner's Court. On May 20, 2004, eleven witnesses testified in court about what happened the night of the shooting, all corroborating Tarik's account. For its part, the Jamaica Constabulary Force alleged that Amanie was killed by an unknown third person when an assailant tried to steal Constable Ellis's gun during a confrontation with the crowd. On June 3, 2004, the jury found that Constable Ellis should be charged with the murder of Amanie Wedderburn.

4. The petitioners allege that before the criminal trial even began, many witnesses had received death threats as a result of their involvement in the case. Such is the case of Eric Wedderburn, who had been the driving force behind the investigation of his nephew's death, identifying his body, making statements to the police and the press, as well as contacting each of the eyewitnesses and ensuring they would be in court for the trial; he ignored the threats and continued pushing the case forward. On August 13, 2004, Eric Wedderburn called Kingston Police Station to ask why Constable Ellis was still on duty and armed. Five days later, he was shot dead in front of his house by passengers of a white car while he was with an unidentified woman, whom got shot too, but survived. The petitioners submit that after this event, it became more difficult to secure the presence and collaboration of the witnesses who appeared at the Coroner's Inquest as they continued receiving death threats, some of which referring explicitly to Eric Wedderburn's murder. As a result, some of the witnesses expressed fear to appear at trial and others fled the country, including Tarik Ergas.

5. On May 1, 2006, when the trial against Constable Ellis began, hardly any witnesses testified. In an effort to introduce Tarik's written testimony in his absence, his father reported having received numerous death threats against his son's life, thus fearing for the life of the latter if he was to testify in person. However, the judge determined that it was not sufficient to meet the standard of "fear on the part of the witnesses" that was necessary to justify the introduction of a written testimony. Thus, Tarik Ergas' testimony from the Coroner's inquest wasn't admitted. The petitioners also submit that Andre Clark, one of the few witnesses who appeared at trial, changed his testimony, hence perjuring himself on the stand – Clark was eventually charged and jailed. Upon his release, the trial judge recognized how fear could be a pervasive factor in Jamaica. After a ten day trial, on May 11, 2006, the jury returned a verdict of "not guilty" of the murder of Amanie Wedderburn, in front of a courtroom filled with police officers. The petitioners indicate that under the circumstances, the prosecution did not appeal.

6. As for Eric Wedderburn, the petitioners allege that the Negril Police failed to investigate or charge anyone in connection with his murder.

7. The petitioners 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 grave violations of human rights suffered by the alleged victims. They refer to a report from the OAS where it was observed that impunity for unlawful police killings in Jamaica was almost absolute, denouncing a "pattern whereby a disproportionately large number of killings are associated with the State's security forces, but where very few prosecutions have been undertaken in relation to those killings"⁴.

8. For its part, the State submits that the petition is inadmissible on the grounds of the doctrine of the fourth instance and for failure to exhaust the domestic remedies. The State alleges that in the case of

⁴ The petitioner refers to the 2012 Country Report on the Human Rights Situation in Jamaica, OEA/Ser.L/V/II.144, 12 August, 2012, par. 94-95.

Amanie Wedderburn, criminal domestic remedies have been pursued and exhausted, and that they were adequate and effective; Constable Ellis was charged for murder, and a jury returned a not guilty verdict after an eleven days trial. The petition is therefore based on the fact that the petitioner did not obtain the outcome hoped for; the petition is thus inadmissible. With regard to civil law remedies, the State indicates that the personal representative of Amanie Wedderburn filed a civil suit in the Supreme Court of Judicature on May 01, 2009, seeking damages under the *fatal accidents act* and the *law reform act* for his death. The State did not challenge the claim, but it entered a defense in respect of the quantity. On January 28, 2010, a judgement on admission was entered in favor of the claimant and on October 25, 2013, the claimant was awarded \$337,000.00 plus interest in special damages and \$180,000.00 plus interest for general damages. The State alleges that no appeal has been lodged in that matter, therefore, Amanie's relatives have been adequately and effectively compensated. The Government thus contends that the petitioner has already availed itself of legal remedies in the domestic courts, and that it cannot call on the Commission to act as a court of fourth instance.

9. With respect to the case of Eric Wedderburn, the State claims that there was no prior exhaustion of domestic remedies. It also submits that there is no evidence that the State violated any rights of the victim; and that there is no indication that the petitioner's allegations were reported to the relevant authority at the time. The mere fact that no one has been charged in connection with the matter doesn't mean that no investigation has taken place.

10. Additionally, the State asserts that the petitioner failed to present the petition in accordance with the provisions of the article 46 of the Convention, since the criminal proceeding ended on May 10, 2006, while the award in the civil suit was made on October 25, 2013, and the petition was filed on July 20, 2010.

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

11. Regarding the murder of Amanie Wedderburn, the Commission observes that an inquiry was conducted by the Bureau of Special Investigations, which forwarded it to the Coroner's Court. On June 3, 2004, following the testimony of eleven witnesses, the jury found that Constable Ellis should be charged with the murder of Amanie Wedderburn. On May 1, 2006, the trial against Constable Ellis began, where hardly any witnesses testified, and on May 11, 2006, the jury returned a verdict of "not guilty" of the murdered of Amanie Wedderburn in favor of Constable Ellis. The Commission notes that the petitioners submit that due to the context that prevailed at that time, the prosecution did not appeal. In this case, the IACHR considers that the alleged threats made against the witnesses implied a climate of generalized fear that would have prevented them from testifying at the trial, as well as made illusory the filing of an appeal against the verdict. Therefore, the Commission concludes that the exception established in Article 46.2.b of the Convention is applicable.

12. With respect to the filing deadline, the Commission notes that petition was received on July 20, 2010, that the alleged victim was killed on May 2, 2003, that on May 11, 2006 a verdict of non-guilty was rendered, leaving his murder in impunity, and that as such the effects of the alleged lack of due process and due diligence in the criminal investigations 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.

13. With respect to the murder of Eric Wedderburn, the Commission recalls that whenever an alleged crime that is prosecutable *ex officio* is committed, the State has the obligation to promote the criminal investigation and that, in such cases, the criminal process is the best way to clarify the facts, prosecute those responsible and establish the corresponding criminal sanctions.⁵ The Commission notes that the petitioners allege that no investigation took place, and that the State did not provide specific information or documents aimed at demonstrating that there were judicial proceedings or a proper police investigation to find those responsible for his death. In view of the foregoing, the IACHR concludes that the exception to the rule of exhaustion of domestic remedies, as provided for in Article 46.2.c of the Convention, is applicable. In view of the context and elements of the petition, the Commission concludes that the admissibility requirements relating to the filing deadline are satisfied.

14. Additionally, the Commission notes that the State submits that the victims were adequately compensated through the civil action. On this matter, the Commission has repeatedly held that said route does

⁵ CIDH, Informe No. 87/08, Petición 558-05. Admisibilidad. Jeremy Smith. Jamaica. 30 de octubre de 2008, párr. 36.

not constitute an appropriate remedy for the purpose of analyzing the admissibility of a claim of the nature of the present, since it is not suitable for provide comprehensive reparation that includes clarification and justice to family members⁶. However, the IACHR will take that monetary compensation into account when deciding the merits of the present case.

VII. ANALYSIS OF COLORABLE CLAIM

15. The Commission notes that this petition includes allegations regarding the murders of Amanie Wedderburn and Eric Wedderburn, as well as the lack of due process and due diligence in the criminal investigations that followed, in a context where the families of the victims and the witnesses were threatened. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study since the alleged facts, if corroborated as true, could characterize violations of articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), 25 (judicial protection) of the Convention, in connection with the articles 1.1 (obligation to respect rights) and 2 (domestic legal effect) of the same instrument.

16. Finally, with regard to the plea of the State of fourth instance, the Commission notes that by accepting this request it is not intended to supplant the jurisdiction of the domestic judicial authorities. Rather, it will analyze, at the substantive stage of this petition, whether the domestic judicial processes complied with the guarantees of due process and judicial protection, and offered due guarantees of access to justice for the alleged victims under the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19, 25 of the Convention, in connection with Articles 1.1 and 2 of the same instrument;

2. To notify the parties of this decision; to proceed 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 April, 2020. Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana Commissioners.

⁶ See IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018.