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**REPORT No. 96/20**  
**PETITION 1030-10**  
REPORT ON ADMISSIBILITY

SHAUN DUNCAN  
JAMAICA

Approved electronically by the Commission on February 26, 2020.

**Cite as:** IACHR, Report No. 96/20, Petition 1030-10. Admissibility. Shaun Duncan. Jamaica.  
February 26, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Jamaicans for Justice (JFJ), and International Human Rights Clinic at the George Washington University Law School (IHRC)
<b>Alleged victim:</b>	Shaun Duncan
<b>Respondent State:</b>	Jamaica <sup>1</sup>
<b>Rights invoked:</b>	Articles 7 (Personal liberty), 8 (fair trial), 21 (property) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	July 16, 2010
<b>Additional information received at the stage of initial review:</b>	December 17, 2010, July 26, 2011, March 16, 2012, August 31, 2012, October 15, 2012
<b>Notification of the petition to the State:</b>	November 13, 2013
<b>State's first response:</b>	February 24, 2014
<b>Additional observations from the petitioner:</b>	November 29, 2018
<b>Additional observations from the State:</b>	January 30, 2019
<b>Notification of the possible archiving of the petition:</b>	June 8, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	July 13, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 5 (humane treatment), 7 (Personal liberty), 8 (fair trial), 21 (property) and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, exception from article 46.2(c) applies
<b>Timeliness of the petition:</b>	Yes, exception from article 46.2(c) applies

<sup>1</sup> 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.

<sup>2</sup> Hereinafter "American Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioners allege that, since 2008, Jamaican Constabulary Force (JCF) Officers have arbitrarily arrested and detained Shaun Duncan (hereinafter “the alleged victim” or “Mr. Duncan”) five times. According to the allegations (1) on May 16, 2008 Mr. Duncan was arrested (supposedly because he resembled a man involved in a robbery), without charge or appearance before a judicial official, pending an identification parade that was not conducted; and was released June 6, 2008; (2) on April 14, 2009 Mr. Duncan’s home was searched under an unverified warrant; some of his personal property including his vehicle were confiscated and Mr. Duncan was arrested and detained without charge, pending an identification parade that was not conducted. He was allegedly released on May 2, 2009, and retrieved his personal property, including his vehicle by July 2009; (3) on August 2, 2009, Mr. Duncan was arrested and personal items related to his profession were confiscated without retrieval to the date of submission of the petition. It is explained that before a Magistrate on August 7, 2009, he was informed of the charges against him of unlawful possession of property and receiving stolen property. He allegedly remained detained until September 2, 2009 when bail was granted; (4) on May 3, 2010, while reporting to the police station, Mr. Duncan’s laptop was confiscated and he was interrogated by a police officer who pushed Mr. Duncan into his office where he forced him to kneel, handcuffed him and twisted the handcuff to try to coerce him to disclose his current address<sup>4</sup>. They claim he remained detained until May 6, 2010 without charge; (5) on October 9, 2011 Mr. Duncan was again arrested and detained. Charges of stolen goods allegedly made against him were eventually dropped on October 26, 2011; but the charge of possession of a breaking implement, remained independent of any theft charges.

2. They allege that, after Mr. Duncan sought to make the police accountable for his first two arrests through the filing of a civil lawsuit and complaints before the Police Public Complaints Authority (PPCA), the police retaliated with further harassment and the subsequent arrests<sup>5</sup>. They claim that, as a result of this continued harassment, Mr. Duncan is now fearful for his life and safety; and that the repeated unwarranted arrests and detentions have ruined his business and impaired his ability to earn and provide for his family. They also allege that Mr. Duncan’s freedom of movement has been affected as, due to his fear for his life, he has been living in different places as he feel unsafe in maintaining a permanent residence; they further claim that the police actions have impaired his ability to obtain full time employment as many of the jobs he would like to pursue are located in areas of the island where JCF officers have threatened his safety. According to the petitioner’s the JCF’s actions against Mr. Duncan form part of a well-documented pattern and practice of intimidation and abuse of police power which is commonplace in Jamaica and a consequence of a general lack of adequate judicial oversight that allow police abuses to remain in impunity.

3. They claim that Mr. Duncan contacted Jamaicans for Justice (JFJ) on July 18, 2008 to seek recourse. They also affirm that a civil suit was filed in the Supreme Court on the April 22, 2009 against the three police officers responsible for Mr. Duncan’s arbitrary arrest and detention. They indicate that Mr. Duncan reported his first and second arrests and detentions to the Police Public Complaints Authority (PPCA) on May 13, 2009. However, they argue that the PPCA is generally considered ineffective to control against cases of police abuse due to a lack of resources, no authority to obtain statements from suspects or witnesses, and lack of means to protect the life and physical integrity of complainants while investigations are conducted.

4. They further argue that there is no adequate system in Jamaica to ensure an ex-officio review of all detentions. They claim that in practice the JCF officers conduct initial review of legality of police arrests and Magistrates tend to defer to police justification of ongoing investigations to authorize prolonged confinement of uncharged suspects<sup>6</sup>. They also allege that Mr. Duncan was denied access to the remedies under

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<sup>4</sup> According to the petitioners, Mr. Duncan feared disclosing his current address to the police because of the harassment and intimidation he had suffered.

<sup>5</sup> They argue that harassing persons who file complaints against them is a general pattern of behavior of the Jamaican Police and cite some examples of other cases in which the allege this has also occurred.

<sup>6</sup> They also argue that the system is inadequate because it allows the legality of police arrests to be reviewed by Justices of the Peace who are not judicial officers or even lawyers *per se*, and who are not independent from the local police force, upon which they rely for their enforcement authority.

domestic law when he was repeatedly denied timely access<sup>7</sup> to legal counsel during his detentions and allegedly inhibited from using legal aid due to representation cost; and was in effect denied the remedy of habeas corpus which requires an attorney<sup>8</sup>. The petitioner claims that, notwithstanding the availability of ex post civil or constitutional remedies, timely review of warrantless police arrests by a “competent court” or effective judicial oversight of detentions (that are without charge), conducted in order to determine legality of police captures and detention, are the only appropriate remedies in situations of arbitrary arrests. It is claimed that in this sense Mr. Duncan was unable to exhaust domestic remedies because the domestic laws of Jamaica do not provide for due process of law adequate to protect the right to personal liberty and security.

5. The State, in turn, claims that investigations by the relevant State agencies into the allegations of the petitioner did not identify any threat or abuse by members of the JCF and that the JCF has indicated that its investigations reveal no deliberate or collaborative attempt to unlawfully or maliciously target or threaten the petitioner. It also highlights that the JCF officers named in the petition have exemplary reputation and maintains that all actions taken by them were lawful and on the basis of a genuine and reasonable belief that the petitioner was involved in criminal activity.

6. It asserts that as of September 7, 2010, all charges against Mr. Duncan were dropped. Further, it claims that at the date the petition was submitted civil remedies were pending, with the parties sent to mediation and the matter being the subject of negotiation. Further the State asserts that each claim for wrongful arrest and detention would give rise to a separate claim for false imprisonment, due to separate factual circumstances, however the alleged victim has only filed a claim in respect of the first arrest and therefore has no credible claim to exhaustion. They argue that given that Mr. Duncan is no longer detained, the remedies available for obtaining reparation for the alleged abuses are the ones that are relevant for the exhaustion analysis. In addition, the State asserts that there were several adequate and effective remedies not used by Mr. Duncan to challenge his detention such as habeas corpus. It contests the allegation to denial of legal counsel to access this remedy, arguing that counsel is routinely assigned to persons who lack financial means. It also claims that legislation affords due process of law for protection of rights allegedly violated under the constitution through a claim to the Supreme Court and under a constitutional motion under the Charter of Fundamental Rights and Freedoms.

7. Further, the State claims that, given that the civil suit filed before the Supreme Court by Mr. Duncan remains pending, it has not been given the opportunity to provide the relief of compensation sought before having to respond to a petition before the Commission. The State claims that the petitioner has failed to exhaust domestic remedies of habeas corpus. Further it claims that, as the exhaustion of domestic remedies remains pending, the petitioner has failed to present the petition within the parameters of article 46.1(b) of the American Convention

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

8. The Commission observes that the petitioners have claimed that Mr. Duncan was unable to exhaust domestic remedies because the Jamaican system does not provide adequate remedies for the protection of the rights to personal liberty and security. It also takes note that the State has claimed Mr. Duncan has not exhausted domestic remedies because he has only failed a false imprisonment claim in relation to his first arrest, he did not attempt the habeas corpus remedy, he has not exhausted the remedies available for obtaining reparation for the alleged abuse, and has not attempted the constitutional remedies available to him.

9. The Commission observes that, as far as the information on file shows, no final decision has yet been issued on the civil suit pertaining the first of Mr. Duncan’s alleged arbitrary arrests, having elapsed more than 10 years since its filing. While it is true that Mr. Duncan has not attempted any remedies to attain reparations for the remaining of his alleged detentions, given the delay in the resolution of the suit he did file

<sup>7</sup> They allege that the Jamaican system is inadequate because it does not guarantee a right to counsel only a right to *retain* counsel, which constitutes discrimination against the economically disadvantaged given the reality that detaining authorities often fail to inform detainees of their right to legal counsel and a legal aid system with insufficient capacity to provide attorneys for all cases

<sup>8</sup> They argue that, even though the habeas corpus remedy can in theory be filed pro se, this is rarely feasible in practice.

and the fact that the State has not provided any information that would indicate that any suits filed by Mr. Duncan in respect of the other detentions could be decided in a shorter time, the Commission considers (without prejudging on the merits) that this petition falls within the exception of art. 46.2(c) of the American Convention. Moreover, given that the petition was filed on July 16, 2010, within two months of the fourth detention of May 3, 2010 the Commission considers that this the petition was filed within a reasonable period of time on the terms of article 32(2) of its Rules of Procedure.

## **VII. ANALYSIS OF COLORABLE CLAIM**

10. The Commission notes that this petition includes allegations regarding Mr. Duncan having been arbitrarily detained on multiple occasions; he having been unlawfully deprived of his property; that he was physically abused by State agents; that the State has failed to adequately investigate the allegations of police abuse; that Mr. Duncan was not afforded access to effective judicial protection during his detention; and that there has been an unreasonable delay in the resolution of the civil suit filed by Mr. Duncan.

11. In light of these allegations the Commission deems pertinent to recall that it has already concluded that in cases such as the present one, which involve possible violations of human rights that are prosecutable ex officio, and even more so when agents of the State may be implicated in the alleged facts, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them.<sup>9</sup>

12. 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, to be corroborated as certain could characterize violations of articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 21 (property) and 25 (judicial protection) of the American Convention in connection with Article 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, 7, 8, 21 and 25 in relation to Articles 1.1 and 2 of the American Convention; 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 26<sup>th</sup> day of the month of February, 2020. Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

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<sup>9</sup> See IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.