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**REPORT No. 124/20**  
**PETITION 1524-13**  
REPORT ON ADMISSIBILITY

HAPETE MICHAEL HENRY AND FAMILY  
JAMAICA

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 124/20, Petition 1524-13. Admissibility. Hapete Michael Henry and family. Jamaica. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Jamaicans for Justice and International Human Rights Clinic at the George Washington University Law School
<b>Alleged victim:</b>	Hapete Michael Henry and family
<b>Respondent State:</b>	Jamaica <sup>1</sup>
<b>Rights invoked:</b>	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 in relation to its Articles 1(1) and 2.

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	September 17, 2013
<b>Notification of the petition to the State:</b>	November 17, 2018
<b>State's first response:</b>	August 22, 2019
<b>Additional observations from the petitioner:</b>	December 14, 2019
<b>Notification of the possible archiving of the petition:</b>	May 24, 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	June 1, 2017

**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
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<sup>1</sup> 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.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Rights declared admissible</b>	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
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes; under the terms of section VI
<b>Timeliness of the petition:</b>	Yes; under the terms of section VI

## V. ALLEGED FACTS

1. The petition arises from allegations that (a) Hapete Michael Henry (“Hapete”) was unlawfully shot by a police officer in April 1998 (and subsequently died of his wounds four days later); and (b) the State has failed to hold the police officer accountable for his unlawful actions.

2. By way of background, the petitioners allege the following: (a) On April 22, 1998, Hapete (aged 17) was attending a football match at National Stadium, between two teams - Arnett Gardens Football Club and Seba United of Montego Bay; (b) there were hundreds of persons at the football match including several members of the Jamaican Constabulary Force (“JCF”) with some in uniform and others in plain clothes; (c) one of the officers present was Detective Corporal Calvin Lewis (hereafter “Detective Lewis), who was in plain clothes; (d) Hapete was shot by Detective Lewis, and subsequently died of his injuries on April 26, 1998. The petitioners submit that accounts vary between the police and civilian witnesses as to the events that led to the shooting of Hapete. Detective Lewis (and other JCF officers) contend that Detective Lewis observed Hapete attempting to make a ganja cigar, following which (a) Detective Lewis approached Hapete and ordered him to stop; (b) Hapete disobeyed the order upon which Detective Lewis then attempted to arrest Hapete; (c) Detective Lewis alleges that he was then surrounded by several Arnett Gardens fans who began to heckle and to physically assault him; (d) Detective Lewis then drew his 9mm pistol from its holster, following which there was a struggle between himself and Hapete, leading to the discharge of the weapon that resulted in Hapete being shot.

3. On the other hand, the petitioners cite at least four civilian witnesses who largely allege that Hapete posed no threat to Detective Lewis when he was shot. According to one witness (the Manager of the Arnett Gardens team), he witnessed Detective Lewis fire a shot into a crowd of person which ultimately struck Hapete. According to the petitioners, three other witnesses allege that Detective Lewis grabbed Hapete by the shirt and shot him at close range without just cause. Another of the witnesses asserts that Hapete was not holding a ganja cigar at the time that he was shot by Detective Lewis.

4. The petitioners complain of long delays (lasting up to 15 years) as well as critical deficiencies in the investigative/judicial processes that ensued following the death of Hapete. In this regard, the petitioners allege that (a) A Coroner’s Inquest was not initiated until two years following Hapete’s death; (b) that this Coroner’s Inquest was never completed because the Coroner had either retired or was transferred; (c) a second Coroner’s Inquest was started in 2005, but ultimately was declared a mistrial after jurors stopped attending because of multiple delays; (c) a third Coroner’s Inquest was started in 2008 which resulted in a verdict (in February 2010) that Detective Lewis was criminally responsible for the death of Hapete, following which Detective Lewis was formally charged criminally in March 2010. According to the petitioners, the Office of the Director of Public Prosecutions (“ODPP) assumed responsibility for the trial of Detective Lewis. The petitioners submit that this trial did not take place until March 2013, when Detective Lewis was ultimately acquitted (on March 18, 2013).

5. According to the petitioners, this acquittal was largely a result of the failure of the ODPP to either investigate or prepare for the trial in an adequate manner. In this regard, the petitioners emphasize that despite the large number of witnesses to the shooting, the ODPP called only two witnesses, both of whom ultimately recanted their testimony. In this regard, the petitioners also contend that the ODPP failed to make

use of the evidence given at the final Coroner's Inquest that had led to a verdict of criminal responsibility on the part of Detective Lewis. In the absence of any other evidence called by the ODPP, the petitioners allege that the trial court ordered the jury to return a verdict of not guilty. The petitioners submit that the acquittal of Detective Lewis represents the exhaustion of domestic remedies. The petitioners add that Hapete was only 17 years old at the time of his death, and that he was particularly vulnerable to police abuse and violence because he suffered from a disability that required extra care and protection. The petitioners also allege that the extrajudicial killing of Hapete, together with the alleged failure of the State to conduct an effective criminal investigation has also given rise to violations of the rights of Hapete's surviving family (his father - George Henry and his mother - Lilian Johnson).

6. The petitioners reject the State's position, emphasizing that (a) civil remedies cited by the State (for compensation) are neither adequate nor effective remedies, particularly where there are allegations of human rights violations that rise to the level of a criminal offence; and (b) the State was under an obligation to conduct an effective criminal investigation, but in this case, the investigation done by the State was patently deficient in virtually every respect".

7. The State rejects the petition as inadmissible primarily on the following grounds: (a) that the petitioners have failed to exhaust domestic remedies; (b) the State did undertake a criminal investigation and prosecution into Hapete's death, and therefore the allegations of the petitioners to the contrary - are manifestly groundless. Regarding the issue of exhaustion of domestic remedies, the State argues that it was open to the petitioners to initiate civil proceedings for compensation, but that the petitioners failed to do so. In this regard, the State emphasizes that apart from being available to the petitioners, 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 whether it alleged that the State failed to adequately pursue the criminal process". With regard to issue of criminal investigation, the State contends that it discharged its duty to investigate and to prosecute. The State further argues that despite the complaints of delay by the petitioners, the criminal investigation ultimately led to the prosecution of a perpetrator, and thus, cannot be regarded (prima facie) as ineffective. With regard to the actual prosecution, the State argues that the prosecuting authorities "enjoy a broad discretion in determining what is the most reliable or credible evidence to present at trial" and that "merely disagreeing with such a judgment of a prosecuting authority, cannot, by itself, entail that there is any serious defect or any obvious and significant shortcoming". The State adds that the mere fact that the trial ended in an acquittal does not provide a prima facie basis for concluding that the State failed to effectively investigate or prosecute.

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

8. The parties diverge on the issue of exhaustion of domestic remedies, with the petitioners contending that domestic remedies were exhausted with the acquittal of Detective Lewis on March 18, 2013, while the State argues that the petitioners failed to exhaust available civil remedies for compensation.

9. With regard 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 resorting to the Inter-American system, since that remedy would not redress the main claim made concerning the alleged arbitrary killing of Hapete, followed by the alleged failure of due diligence in investigation, prosecution, and punishment of those responsible, together with delay in conducting such an investigation. The Commission reiterates that under international standards applicable to cases like this one, where serious human rights violations such as homicide 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, individualize and prosecute the persons responsible.

10. In this case, the Commission notes, for the purpose of the analysis of admissibility, that the petitioners exhausted all the remedies available in the domestic legal framework, and that, consequently, the petition meets the requirement established in Article 46.1.a of the Convention. As to timeliness, the Commission notes that the petition was filed on September 17, 2013, and therefore was filed within six months

of the date of the notification of the final decision by which domestic remedies were exhausted (March 18, 2013). the domestic legal system. Thus the petition meets the requirement set forth in Article 46.1.b of the Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

11. The Commission notes that the petition contains allegations regarding (a) the extrajudicial killing of Hapete; (b) long delays (lasting up to 15 years) as well as critical deficiencies in the investigative/judicial processes that ensued following the death of Hapete. The State does not dispute the time that elapsed between the killing of Hapete and the conclusion of the criminal trial; nor does the State dispute or justify the delays in completing a Coroner's Inquest. Nor does that the State dispute the petitioner's contention that multiple witnesses were excluded from the trial of Detective Lewis. In this regard the State insists that the prosecutor was entitled to exercise a discretion on which witnesses to call (or not call). While the Commission appreciates this discretion, it nevertheless is concerned that the failure of the prosecutor to call relevant witnesses may, prima facie have undermined the right to due process to the detriment of Hapete and his surviving family. Similarly, the Commission considers that the delays in conducting the criminal investigation could give also give rise to similar violations under the American Convention.

12. 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, the delays in investigation; the exclusion of relevant evidence in the criminal trial; and the alleged failure of the State to take measures to protect Hapete's rights as a child are not manifestly unfounded and require a substantive study since the alleged facts, 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 in relation to its Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects), to the detriment of Hapete and his surviving family.

## 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; 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 24<sup>th</sup> 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 Troitino, Julissa Mantilla Falcón, and Stuardo Ralón Orellana Commissioners.