

REPORT N° 87/08
PETITION 558-05
ADMISSIBILITY
JEREMY SMITH
JAMAICA
October 30, 2008

I. SUMMARY

1. On May 17, 2005, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Inter-American Commission”) received a petition filed by Yvonne McCalla Sobers, chairman of the organization Families Against State Terrorism, and represented by the International Human Rights Law Clinic of the Washington College of Law (“the petitioners”) on behalf of Jeremy Smith, a Jamaican citizen who died during a police intervention on June 18, 2002.

2. The petition alleges a violation of Jeremy Smith’s right to life under Article 4 and of his and his family’s right to judicial protection, under Article 25 of the American Convention on Human Rights (“the American Convention”) in relation with its Article 1(1) based on allegations that excessive, disproportionate and unwarranted force was used by State agents against Mr. Smith; that the State failed to undertake an effective investigation into the circumstances of his death; and that it failed to prosecute the police agents responsible.

3. The State alleges that there is insufficient evidence to prosecute the police officers involved in the death of Jeremy Smith on the basis that the officers were acting in self-defense when Jeremy Smith and others allegedly opened fire on the officers conducting a police operation in the area. Further, the State claims that the petition is inadmissible because domestic remedies were not exhausted as required by the American Convention, and that it does not fall under the exceptions specified in Article 46(2) therein.

4. After analyzing the facts presented, the Commission declares the petition admissible with respect to the alleged violation of Articles 4, 8 and 25 in relation with Article 1(1) of the American Convention. As such, it decides to transmit this report to the parties, to continue with the analysis of the merits of the case, and to publish this report and include it in its Annual Report to the General Assembly of the Organization of the American States.

II. PROCESSING BY THE COMMISSION

5. On May 23, 2005, the Commission acknowledged receipt of the petition received on May 17, 2005 and assigned it petition number 558-05. In a note of July 20, 2005, the Commission transmitted the pertinent parts of the petition to the Government of Jamaica in conformity with Article 30 (2) of its Regulations, requesting a response within two months in compliance with Article 30(3) of its Rules of Procedure. On the same date, the petitioners were informed of the request made to the State.

6. By a note dated September 20, 2005, the State requested an extension to present its observations, which was granted by the Commission. On October 4, 2005, the Commission acknowledged receipt of the response from the State, which was duly transferred to the petitioner.

7. The Commission received additional information from the State on December 8, 2005; February 3, 2006; July 26, 2006; January 8, 2007; and January 29, 2007. These communications were duly transmitted to the Petitioners for their observations.

8. The Inter-American Commission received additional information from the petitioners on November 2, 2005; January 20, 2006; April 13, 2006; September 6, 2006; October 6, 2006; and, December 12, 2006. These communications were duly transmitted to the State for its observations.

9. At the request of the petitioners, the IACHR held a hearing regarding this case on March 13, 2006, during its 124th period of sessions.

III. POSITIONS OF THE PARTIES

A. Petitioners

10. The petitioners claim that Jeremy Smith's right to life, as protected by Article 4 of the American Convention, has been violated because of the use of excessive, disproportionate and unwarranted lethal force used against him by State agents. They also claim that Mr. Smith and his family's right to judicial protection as set forth in Article 25 of the American Convention have been violated, due to an ineffective, partial and unduly delayed investigation and to the State's failure to prosecute the individuals responsible for his death.

11. Specifically, petitioners allege that on June 18, 2002, Jeremy Smith, 24 years old, was at a shop watching a football match with other men in the district of Cobern Penn, St-Andrew, Jamaica. Outside the shop, someone shouted "police," and everyone ran from the premises, except Jeremy Smith and two other men, Damion Miller and Oakland Foster. According to Damion Miller, two armed police officers, Constables Desmond Edge and Evon Blake entered the shop and immediately opened fire, killing Oakland Foster and Jeremy Smith. Right after the shooting, the police removed the two bodies from the scene. Petitioners allege that before the officers could kill Damion Miller, neighbors from the area gathered around the shop. Damion Miller was taken into police custody and charged with the offense of shooting with intent and illegal possession of a firearm.

12. On June 21, 2002, two days after her son's death, the mother of Jeremy Smith, Mrs. Carlene Smith, filed a complaint with the Police Complaints Authority alleging the unjustified fatal shooting of her son. Eight months later, on February 24, 2003, that office sent her a letter informing her that it had completed the investigation and had submitted a report to the Director of Public Prosecution (DPP) for a ruling on criminal liability of the police officers. In October 2003, Mrs. Smith received a letter from the DPP stating that it had decided to send the case to the Coroner for a final determination as to the criminal responsibility for Jeremy Smith's death. On March 9, 2004 the Coroner held an inquest into the matter and the ten person jury returned a verdict of "manslaughter by persons unknown." The Coroner's verdict was then turned over to the DPP for a final determination on prosecution. According to petitioners, up until the date upon which the petition was presented to the Commission, May 17, 2005, the DPP had not issued its final decision. Ultimately, on January 5, 2006 the DPP issued its final decision that the police officers would not be charged due to a finding of insufficient evidence to proceed with prosecution.

13. Regarding the first allegation, petitioners claim that Jamaica is responsible for violating Jeremy Smith's right to life on the basis that members of Jamaica's security force used excessive, disproportionate and unwarranted lethal force against Jeremy Smith leading to his death. They also allege that by failing to impose limitations on the amount of force used by the police, the State breached its duty to take reasonable steps to prevent situations that could result in the arbitrary deprivation of life. The petitioners state that this also constitutes a breach of international instruments such as the U.N. Code of conduct of Law Enforcement Officials, and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement officials, which provide that lethal force should only be used by State agents when "strictly necessary"¹ and strictly unavoidable to protect life², and that firearms should not be

¹ Petitioner's submission of May 17, 2005, citing the UN Code of conduct for Law Enforcement Officials, General Assembly resolution 34/169, G.A.O.R. Supp. No. 46 at 186 U.N. doc. A/34/46 (1979) at Article 3.

² Petitioner' submission of May 17, 2005, UN Basic principles on use of force and firearms by law enforcement officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, U.N./Doc. A/CONF.144/28/Rev.1 at 112 (1990) § 9.

used against persons who are unarmed and offer no resistance³. Petitioners also allege that this incident occurred within a larger context of excessive use of force against civilians by police officers in Jamaica.⁴

14. With respect to the second allegation, petitioners contend that the investigation into the death of Jeremy Smith by the Jamaican authorities was inefficient, inadequate and dilatory, which they claim has led to a miscarriage of justice in which those responsible for the death of Jeremy Smith have not been held accountable for their actions. They consider this to constitute a violation of the right of Jeremy Smith and his family to judicial protection due to the lack of an impartial investigation within a reasonable period of time, and to the failure to prosecute the persons responsible for the crime. In this regard, they stress the right to judicial protection requires the State to conduct a diligent investigation in every situation involving violations of the rights protected by the American Convention.⁵

15. The petitioners further claim that there were undue delays in the police investigation, which lasted 7 months, after which the case was transmitted to the DPP. Eight months later, the case was referred to the Coroner. The Coroner is required to schedule an inquest as soon as possible once it receives the police and medical reports, but in this case the inquest was held on March 9, 2004, almost 2 years after the shooting.

16. Petitioners specify a number of deficiencies in the investigation process, noting that the evidence on the bodies was contaminated, because they had been tampered with before a medical and forensic professional could examine them. They also claim that the scene was not sealed off and that bystanders were not prevented from entering the area. Petitioners allege that no photographs were taken by police authorities to document the scene, or the evidence, and that there were no independent police investigators on the scene to question witnesses and obtain statements of what transpired. Only the police officers involved in the shooting were present.

17. Specifically, the petitioners allege material discrepancies between the conclusions in the police report and the witness testimony relating to the circumstances of the death of Jeremy Smith. According to the police report, the men in the shop brandished guns and opened fire on the police officers, who returned fire. The police report concluded that Jeremy Smith and Oakland Foster were killed in an exchange of fire with police officers, that Jeremy Smith and the other men in the shop opened fire on the officers first, and that the police officers responded in self-defense. Contrary to what the police report concluded, petitioners cite information from key witnesses to the June 18, 2002 event, which contradict that of the officers' account in the police report. Petitioners further argue that information from three key witnesses to the event were not included in the police report. One of these, Pauline Evans, indicated that there was no exchange of fire between the police and the men in the shop, but rather that the police arrived, entered the premises and opened fire. In addition, Ms. Evans states that upon seeing the police enter the shop, she heard Oakland Foster and Jeremy Smith plead for their lives and claim their innocence before she heard gunshots. Ms. Joyce Hayden, who petitioners allege lives across the street from the shop, states that after hearing a first round of gunfire, she went outside and saw the police outside the shop. Shortly thereafter she heard another round of gunfire. A few minutes later, witnesses testify that they watched the police officers carry two bodies out of the shop and put them in their service vehicle. Consequently, the petitioners conclude that the investigation process was faulty and therefore led to an inaccurate conclusion on criminal liability of the officers involved in the shooting of Jeremy Smith.

18. It is also alleged that the Coroner's Inquest was characterized by deficiencies. The petitioners claim that the decision by the Coroner's Inquest was partial, inadequate and highly biased in

³ UN Code of conduct of Law Enforcement Officials *supra* note 1 at Article 3.

⁴ Petitioner's submission of May 17, 2005, referring to reports from Amnesty International, Jamaicans for Justice and the United Nations.

⁵ Petitioner's submission of May 17, 2005, referring to I/A Court H.R., *Velasquez Rodriguez Case*. Judgment of July 29, 1988, Ser. C. N° 4 (1988) § 176, 177; UN Principles on the effective prevention and investigation of extra-legal, arbitrary, and summary executions, ESC res. 1989/65, annex 1989 UN ESCOR Supp. No 1 at 9 and 52, UN Doc. E/1989/89.

favor of the police. Specifically, they allege that no significant civil witness was questioned during the Inquest. Further, while they allege that the autopsy and ballistic reports explicitly showed that the bullets fired by the police officers had killed Mr. Smith, these were not considered in the Inquest. Petitioners contend that these deficiencies led to a faulty verdict of “manslaughter by persons unknown,” which was inconsistent with the available evidence confirming that the police fired the fatal shots. The case was then returned to the DPP for a final determination, but which did not issue its final decision until two years later. The petitioners allege that the DPP’s decision not to prosecute the officers responsible for the shooting further violated the right of Mr. Smith and his family to judicial protection, since the persons responsible for his death were not held accountable for their actions.

19. With respect to exhaustion of domestic remedies for the determination of admissibility of the petition, the petitioners first allege that pursuing their claim before the Supreme Court would be ineffective, because it rarely elects to review the DPP’s decisions and seldom reverses its decisions; and that even if the Supreme Court were to reverse the decision, the DPP would likely uphold its decision not to prosecute. Under section 94(c) of the Jamaican Constitution, the DPP “has the sole authority to discontinue criminal proceedings at any stage before judgment is delivered,”⁶ and it “can decide whether to press criminal charges or overturn the verdict of the Coroner’s inquest.” Therefore, the petitioners argue that pursuing a Supreme Court review would be ineffective and inadequate for an exhaustion analysis on the grounds that the DPP retains exclusive authority over prosecution.

20. It is argued that this petition falls under the exception contained in Article 46(2)(b) of the American Convention because they were prevented from exhausting domestic remedies. Specifically, petitioners state that “the alleged violations are offenses that the State cannot or will not prosecute on its own initiative.” In support of their argument, petitioners cite the reasoning and findings in a similar case decided by the Commission, *Michael Gayle v. Jamaica*,⁷ in which the Commission found that the State denied the petitioners access and or had prevented them from exhausting domestic remedies under similar circumstances. In addition, petitioners note the unwarranted delay in issuing a final judgment. The petitioners also assert that “throughout the petition process, the government has failed to cooperate in producing documents relevant to this case,” supporting their claim of lack of due process in Jamaica.

21. The petitioners claim that Mrs. Carlene Smith should be exempted from pursuing civil domestic remedies and further constitutional challenges in view that such steps would be ineffective. They contend that exhaustion of civil remedies is unnecessary to meet the American Convention’s admissibility requirements, particularly because civil remedies have not been found to be a sufficient substitute for criminal recourse in the inter-American system’s jurisprudence, including in the case of *Michael Gayle v. Jamaica*.⁸ They also allege that States Parties have an obligation to ensure the free and full exercise of the rights protected and therefore they are responsible to prosecute on their own initiative when a crime is committed.

22. In the alternative, the petitioners allege that, even if the IACHR were to consider that the exhaustion of civil remedies was necessary to comply with the requirements of article 46(1), the Smith family does not have access to these remedies since they are indigent and the State does not provide them with free legal representation. In their view, this qualifies for the exception under Article 46(2)(c) of the American Convention.

B. The State

23. The State’s response largely focuses on its position with respect to the admissibility of the petition. Specifically, the State argues that the petition is inadmissible under Articles 46(1) and 46(2)

⁶ Petitioner’s submission of May 17, 2005, referring to Case of Michael Gayle, Jamaica, Petition N° 191/02, Report N° 8/03, Admissibility, Annual report of the IACHR 2003 Report CIDH § 43.

⁷ IACHR Report No. 8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para. 44, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>.

⁸IACHR Report No. 8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) paras. 43-44.

of the American Convention on the grounds that domestic remedies were not exhausted, and because the petition does not satisfy the requisites for an exception to that requirement. The State does not controvert the allegations of the substantive rights (Articles 4 and 25), as such.

24. The State asserts that civil remedies are still available to the petitioners. On this point, the State alleges that a claim could be filed with the Supreme Court under section 1(9) of the Constitution to seek a review of the DPP decision not to prosecute. However, the State also admits that while a decision of the DPP can be reviewed under section 1(9) of the Constitution, it is a “highly exceptional remedy” granted in exceptional cases, as held in the recent decision (*Leonie Marshall v. DPP*) by the Judicial Committee Privy Council. It also mentions a second possibility available for the petitioners, which is to file a claim under Section 25 of the Constitution citing a violation of the fundamental rights of Mr. Smith and his family. To do so, the State claims that the petitioners should first pursue the matter before the Court of Appeal and the Privy Council. The third remedy available, according to the State, is a private civil prosecution against the State in order to have reparations.

25. The State claims that civil remedies should be included in the requirement of exhaustion of domestic remedies because the burden of proof is lower in civil procedures than in criminal procedures, and because the general remedy for a violation of the right to life is a civil remedy in a common law country such as Jamaica, separate from the obligation to investigate and prosecute⁹. The Government gives the example of Report N° 19/92, *Ramona Africa v. USA*, in which the Commission asserted that in countries where both criminal and civil remedies existed, both had to be exhausted in order to comply with exhaustion. The State further argues that the inclusion of civil remedies in the requirement of exhaustion would not detrimentally affect the DPP and that the Commission, by including civil remedies, would show respect for local legal systems.

26. As to the petitioner’s allegation of indigence, which allegedly prevented them from securing legal representation and pursuing civil and constitutional claims, the State asserts that the validity of the petitioner’s claim of indigence would need to be proven, and that it would need to demonstrate how this situation impeded them from pursuing civil actions. Even in such case, however, the State alleges that it is always possible for an indigent person in Jamaica to contract a lawyer on a contingency basis, and therefore, the indigence of the Smith family could have prevented them from exhausting domestic remedies. The State alleges that the refusal of an attorney to take the case might be caused by the lack of merit in the case. Regarding constitutional redress, the State asserts that the Public Defender provides legal representation “where necessary” including the payment of legal aid in cases in which a constitutional violation is alleged. Further, it claims that many attorneys and human rights organizations in Jamaica are willing to assist plaintiffs in wrongful death claims.

27. The State further contends that the present case does not fall within the exceptions provided for by Article 46(2)(b) of the American Convention. It bases this claim on three main arguments: that it does prosecute such offenses; that the investigation was not deficient; and that there were no unwarranted delays in the investigation or judicial processes.

28. The State claims that this case should be distinguished from the cases of Whitley Myrie and Michael Gayle in order for the IACHR to evaluate them on a case by case basis.

IV. ANALYSIS

A. Competence of the Commission *ratione personae, ratione loci, ratione temporis, and ratione materiae*

29. The Commission will next address questions of competence. The Petitioner has *locus standi* to submit petitions to the Commission, in accordance with Article 44 of the Convention. The petition identifies as the alleged victim Mr. Smith, an individual person, whose rights under the

⁹ State’s submission of July 26, 2006 noted that this is recognized by the European Court of Human Rights.

Convention the State of Jamaica is committed to respect and ensure. The victims presented are Jeremy Smith and his family. The Commission further notes that Jamaica is a State party to the American Convention, having ratified it on August 7, 1978. The Commission therefore has competence *ratione personae* to study the petition.

30. The Commission has competence *ratione loci* to take cognizance of this petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party. It also has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State. Finally, the IACHR has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

31. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention specifies that, in order for a case to be admitted, “remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law.” When domestic remedies are unavailable as a matter of fact or law, however, the requirement may be excused. Article 46(2) of the American Convention specifies that this exception applies if the legislation of the State concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging the violation has been hindered in his or her access to domestic remedies; or if there has been an unwarranted delay in the issuance of a final judgment.

33. Further, when the petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the IACHR Rules of Procedure provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the record.¹⁰ The fundamental principles governing the nature of the remedies that must be exhausted in the inter-American system determines that those remedies must be both adequate, in that they are suitable to address an infringement of a legal rights, as well as effective, in that they are capable of producing the result for which they are designed.¹¹ In the context of these principles, both the Inter-American Court and the Commission have held that a state’s obligation to respect and to ensure respect for the rights under the Convention entails the obligation to prevent, investigate and punish any violations of those rights.¹² When a crime is committed that can be prosecuted on the State’s own initiative, the State is obliged to promote and advance the criminal proceedings to clarify the events, judge those responsible, and establish the corresponding criminal sanctions.

34. In the present case, the Commission considers that the facts alleged by the petitioners involve the alleged violation of the non-derogable right to life, which under domestic law is an offense that would be prosecuted by the State on its own initiative. Therefore it is this process, initiated and pursued

¹⁰ IACHR Report No. 8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para. 38, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>; I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 59.

¹¹ IACHR Report No. 8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para 39, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>; I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4 (1988), paras. 63-66. I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Ser. A N° 11 (1990), paras. 34, 36.

¹² IACHR Report No.8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para. 40, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>.

by the State that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages.

35. In this regard, the record before the Commission indicates that the State undertook some procedures for investigating Mr. Smith's death, including a Coroner's Inquest and an investigation by the State's Bureau of Special Investigations. The petitioners claim, however, that the investigations were deficient and that the Director of Public Prosecutions ultimately declined to pursue charges against those the petitioners accuse of responsibility for Jeremy Smith's death, despite the existence of evidence, which the petitioners allege requires prosecution.

36. Moreover, based upon the submissions of the parties, the Commission is satisfied that the Director of Public Prosecutions has exclusive authority under Section 94 of the Constitution of Jamaica for making all decisions concerning criminal prosecutions arising in Jamaica, including the authority to take over and continue, or to discontinue at any stage before judgment is delivered, any criminal proceedings instituted by the DPP or any other person or authority.¹³ Accordingly, the State retains exclusive authority for pursuing criminal proceedings in respect of the circumstances relating to Jeremy Smith. While the record indicates that there is a provision under Jamaican law for "private prosecutions," the Commission considers that proceedings of this nature do not constitute remedies that the Petitioners are required to exhaust.¹⁴ It is clear from the instruments and decisions of the inter-American system 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 means and expertise to fulfill these responsibilities.

37. The Commission similarly considers that an application for judicial review in respect of the DPP's decision not to prosecute criminal charges in relation to Jeremy Smith's death does not constitute an effective remedy that the Petitioners should be required to pursue for the purposes of the exhaustion of domestic remedies requirement. It reaches this conclusion in light of the fact that the ability of an individual to pursue an application for judicial review requires the granting of leave by the Jamaican Supreme Court which, according to the information provided by both parties, is a discretion that is exercised by the Court infrequently,¹⁵ as well as the fact that, even where successful, the relief available appears to be limited to an order requesting the DPP to reconsider the decision not to prosecute.

38. On the issue of capacity to pursue further remedies and indigence of Petitioners, in a similar case, *Whitley Myrie v. Jamaica*, the Commission held, that "it is not satisfied that the *Public Defender (Interim) Act 1999* has been shown to render domestic remedies effectively available to indigent individuals such as Mr. Myrie"¹⁶, since "the Public Defender has a considerable degree of discretion in determining whether to grant a complainant legal aid to pursue a Constitutional Motion" and "legal aid is in fact authorized in a very small number of the constitutional complaints brought to the Public Defender". The Commission considers that this discretionary power of the Public Defender in deciding who will be provided with public legal representation makes the said constitutional remedies inaccessible for indigent individuals such as the members of the Smith family.

39. Based upon the information presented, the Commission finds for the purposes of the admissibility of the Petitioners' claims that the State has denied the petitioners access to or has prevented

¹³ IACHR Report No.8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para. 43, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>.

¹⁴ IACHR Report No.8/03, Petition 191-02, Admissibility Michael Gayle, Jamaica (February 10, 2003) para. 43, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>.

¹⁵ IACHR Report No.8/03, Petition 191-02, Admissibility, Michael Gayle, Jamaica (February 10, 2003) para. 44, also available at: <http://www.cidh.org/annualrep/2003eng/Jamaica.191.02.htm>.

¹⁶ I/A Court H.R., Report N° 7/03, Petition 729/01, Whitley Myrie, Jamaica, (February 20, 2003), Annual Report 2003, paras. 55-57.

them from exhausting domestic remedies in respect of the claims in their petition. The petitioners allege that they have been impeded from exhausting further remedies, or that these are not available to them, and the State has not made a sufficient showing to demonstrate that there remain remedies to be exhausted which would be both available and effective according to the general principles of international law. The Commission further notes that the present case is distinguishable from the Ramona Africa case mentioned by the State by virtue of the factual circumstances which included additional elements, as well as by the fact that the civil remedies in question included civil rights claims concerning alleged discrimination.¹⁷ Consequently, the requirement of exhaustion of domestic remedies does not apply to the Petitioners pursuant to Article 46(2) of the Convention.

40. It only remains to note that invoking the exceptions to the prior exhaustion rule provided for in Article 46(2) of the Convention is closely bound up with the determination of possible violations of certain rights set forth therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, has an autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule provided for in sections (a), (b), and (c) of that provision are applicable to the case in question must be undertaken prior to and separate from the analysis on the merits, since it turns on a different standard of appreciation than that used to determine the violation of the judicial guarantees of the Convention. It should be noted that the causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the Report adopted by the IACHR on the merits in order to determine whether there have been violations of the American Convention.

2. Timeliness of the petition

41. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely within six months from the date on which the complaining party was notified of the final judgment at the domestic level. As in the case of exhaustion of domestic remedies, however, Article 46(2) of the Convention provides that the six-month period under Article 46(1)(b) of the Convention shall not apply under certain conditions. This includes circumstances where the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

42. Given the Commission's finding that Article 46(2) is applicable in the circumstances of the present case, the six-month period does not apply to the Petitioners' petition. The State has not contested the issue of the six month period, and the Commission is satisfied in the circumstances of the matter that the petition was filed within a reasonable time. In this regard, the Commission notes that the final decision against prosecuting the officers was rendered in January 2006, after the filing of the petition in May 2005. The Commission therefore finds no bar to the admissibility of the petition under Article 46(2) of the Convention and Article 32 of the Commission's Rules of Procedure.

3. Duplication of proceedings

43. Article 46(1)(c) of the Convention provides that admissibility of a petition by the Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

44. From the documents in the file, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization. The Commission therefore considers that in the instant case, the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

¹⁷ IACHR Report No.19/92, Petition 10.865 Admissibility, Ramona Africa, U.S. (October 1, 1992), available at <http://www.cidh.org/annualrep/92eng/USA10.865.htm>.

4. Colorable claim

45. Articles 47(b) and 47(c) of the American Convention require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, or if the statements of the Petitioners or of the State indicate that the petition is manifestly groundless or obviously out of order.

46. The standard by which to assess these extremes is distinct from that applied when deciding upon the merits of a petition. The Commission must undertake a *prima facie* evaluation, not for the purpose of establishing the existence of a violation, but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a summary analysis that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases—one for admissibility and the other one for the merits—the Commission’s own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to establish a violation.

47. The petitioners allege that the State is responsible for the violation of Articles 4 and 25 of the American Convention, in conjunction with violations of Article 1(1) of the Convention, in relation to the death of Jeremy Smith. The Commission, pursuant to the principle of *iura novit curia*, will analyze the possible application of Article 8 to the claims raised in the merits stage.

48. Based upon the information provided by the parties, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations that, if proved, tend to establish violations of the Mr. Smith’s right to life under Article 4 of the Convention, and the rights of Mr. Smith’s family under Articles 8 and 25 guaranteed by the Convention, and that the statements of the Petitioner are not, on the information provided, manifestly groundless or obviously out of order. Consequently, the petition is not barred as inadmissible under Articles 47(b) or 47(c) of the American Convention.

V. CONCLUSIONS

49. The IACHR concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention.

50. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible, with respect to Articles 4, 8 and 25, in conjunction with Article 1(1) of the American Convention.
2. To transmit this report to the parties.
3. To continue with the analysis of the merits of this case.
4. To publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 30th day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz

Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts
Paulo Sérgio Pinheiro, and Victor E. Abramovich, Commissioners.