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REPORT No. 89/17

PETITION 788-08

REPORT ON ADMISSIBILITY

**CURTIS ARMSTRONG A.K.A. TYRONE TRAILL
JAMAICA**

Approved by the Commission at its session No. 2093 held on July 7, 2017.
163rd Special Period of Session.

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Tyrone Trill. Jamaica. July 7, 2017.

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Curtis Armstrong a.k.a. Tyrone Traill, Karine Peters ²
Alleged victim:	Curtis Armstrong a.k.a. Tyrone Traill
State denounced:	Jamaica
Rights invoked	Articles 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights; ³ and Articles 9 and 17 of the Universal Declaration of Human Rights

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	July 7, 2008
Additional information received at the initial study stage:	August 1 and November 26, 2012
Date on which the petition was transmitted to the State:	February 10, 2014
Date of the State's first response:	June 10, 2014
Additional observations from the petitioning party:	December 9, 2014; July 6 and November 13, 2015; June 7, 2016; March 29, May 8 and May 9, 2017
Additional observations from the State:	March 4, 2015

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. ANALYSIS OF 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
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¹ Commissioner Margarette May Macaulay, a Jamaican national, did not participate in discussing or deciding this case, in accordance with Article 17.2.a of the IACHR's Rules of Procedure.

² On May 10, 2016, Mr. Armstrong requested the IACHR to add Ms. Karine Peters as a co-petitioner.

³ Hereinafter, "Convention" or "American Convention."

⁴ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 21 (private property) and 25 (judicial protection) of the American Convention in accordance with its Article 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of section VI
Timeliness of the petition:	Yes, in terms of section VI

V. ALLEGED FACTS

1. Curtis Armstrong, also known as Tyrone Traill, alleges that his due process rights have been violated; that he is constantly physically abused and threatened by constables while in prison in Kingston, Jamaica; and that he has no access to the documents indispensable to prepare his defense. The petitioner indicates that he was the prime suspect in the shooting and injuring of two police constables on August 28, 2003. He was arrested in January 2004 and claims that he was held in detention for two to three months without being charged. The petitioner indicates that on May 3, 2005, he was sentenced by the Gun Court Division of the High Court at St. Ann's Bay to 20 years for illegal possession of a firearm, and 25 years and 30 years for wounding with intent (2 counts), which would run concurrently. On June 12, 2006, the Court of Appeal refused the application for leave to appeal against the conviction and dismissed the appeal against the sentence. On January 2007 the petitioner contacted a Privy Council Agent, who informed him that only in exceptional circumstances would leave to appeal in the Privy Council be granted in cases coming from the Gun Court Division.

2. The petitioner claims that during the trial he stated his desire to represent himself, however the court appointed an attorney, Mr. Ravil Golding, who represented him in the criminal proceeding. On March 2008, the petitioner submitted a Professional Misconduct Application, under the Legal Professional Act, before the Disciplinary Committee of the General Council against Mr. Golding. He alleged that the attorney's defense was deficient, due to his incompetence and ineffectiveness in challenging and objecting to the numerous discrepancies in the crown's evidence to corroborate the case, and the excessive sentence of 25 and 30 years. The General Council designated a date for the hearing, which was then postponed indefinitely. On March 27, 2015 the petitioner reiterated his previous complaint to the General Council.

3. Regarding the alleged physical abuse, the petitioner affirms that while in prison he has been subjected to cruel, inhuman and degrading punishment, as well as to unreasonable searches and seizures during which his property was destroyed, in reprisal for the complaints made against the prison authorities. According to the petitioner, on October 24, 2011, he was taken to the St. Mary Hospital to obtain medical treatment for wounds inflicted by the police officers; however, he alleges that the police officers did not take him to his following medical appointments. He adds that the authorities do not comply with his prescribed medical treatments, special diet (he indicates that he is Rastafarian) and have destroyed his personal and legal correspondence in an effort to prevent his complaints from being brought to the IACHR. The petitioner indicates he complained several times -since his pre-conviction detention in 2004-, to St. Ann's Court (Gun Court Division), the Supreme Court Chief Justice, the Disciplinary Committee of the General Legal Counsel Office, the Department of Correctional Services and the office of the Public Defender requesting intervention to terminate the constant episodes of physical abuse, with no results. On November 7, 2011, the petitioner and other prisoners contacted the Independent Commission of Investigations (INDECOM) and lodged a complaint regarding what they characterize as the brutal assault of October 24, 2011. The INDECOM sent an investigator who visited them in prison and took statements about the incident, but the petitioner does not have additional information on any outcome.

4. Finally, the petitioner states that he is facing obstruction in accessing documents and evidence required for the preparation of a possible suit against the constables responsible for the physical abuse; as well as for a petition to the Governor General to send his case back to the Court of Appeal for reconsideration. The petitioner claims that he filed numerous applications under the *Access to Information*

Act 2002 to the Supreme Court of Kingston, the Ministry of Justice, the Ministry of Health, the Office of the Public Defender, the Clerk of St. Mary's Court, and other authorities, requesting copies of the documents, information and evidence regarding his criminal charges, trial and medical records, but this data was not sent to him.

5. The State submits that the petition is inadmissible as the petitioner did not exhaust domestic remedies at the time of the presentation of the petition. Further, the State submits that the petition should be declared inadmissible on the ground that the petitioner has failed to comply with the time period provided for the presentation of petitions in Article 46.1.b) of the Convention. In particular, the State alleges that when one is alleging unfair trial or procedure in connection with a ruling of the Court of Appeal, recourse should be taken through an appeal to the Privy Council. In the instant case, the petitioner did not proceed to apply for leave to bring the matter before the Privy Council, failing to exhaust domestic remedies.

6. With respect to the petitioner's allegation of assault by its agents, the State specifies that the petitioner was entitled to bring a claim for damages against the State and apply to the Supreme Court for redress. Further, it was open to the petitioner to present complaints against police officers to the Police Complaints Authority for investigation. The Government therefore contends that there are adequate and effective domestic remedies which have not been pursued and exhausted. The State alleges that records indicate that the petitioner brought certain allegations to the attention of the Attorney General's Chambers on March 27, 2013; a request for further information was dispatched in June 2013 to which no response has been received. Further the petitioner's supporting documents only indicate that complaints have been made to the Chief Justice and the General Legal Counsel but not to the police or INDECOM, which is the correct entity to submit claims since 2011. Moreover, as the petitioner indicated that he was represented by an attorney in relation to the matter, the State claims there is nothing credible to substantiate his allegation that he was denied recourse to the courts.

7. Finally, with respect to access to information, the State alleges that when a request has been refused, the person affected has the right to appeal the decision of the public authority. It indicates that the decision of the Appeal's Tribunal would also be amenable to judicial review by the Supreme Court in certain circumstances. According to the State, the petitioner has not indicated that he has appealed the decision of the public authority not to grant access to the documents sought and as such he has failed to exhaust domestic remedies.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. Regarding the alleged violations in the criminal process, the petitioner alleges that domestic remedies were exhausted with the June 12, 2006 Court of Appeal ruling. The State claims that the petitioner did not proceed to apply for leave to bring the matter before the Privy Council, failing to exhaust domestic remedies, and that the petition was not lodged in a timely manner. On the question of timely filing, in cases in which there is a final sentence, as in the present, a petition questioning that process must be filed within 6 months. The Commission notes that the petition was filed on July 7, 2008, and that the last judgment in the criminal trial was given on June 12, 2006; consequently, the petition is inadmissible with respect to the claims related to the criminal proceedings on the grounds of untimeliness.

9. On the other hand, the petitioner claims that he has been denied a remedy with respect to his claim that he received inadequate counsel and defense in his criminal trial. He submitted a Professional Misconduct Application on March 2008 and the Disciplinary Committee decided that his matter should be set for a hearing. The petitioner has been expecting that his matter be heard since then. The State did not provide observations or evidence rebutting this allegation. In these circumstances the IACHR considers that an eight-year period represents undue delay for the purposes of admissibility, and accordingly excuses the petitioner from exhausting domestic remedies in this regard, pursuant to Article 46.2.c of the Convention.

10. Concerning the allegations of physical abuse and inadequate detention conditions, the petitioner argues that the prison authorities were made aware of his situation and did not take action. The petitioner claims that he sent numerous communications to judicial and governmental authorities of his

country -including INDECOM- in which he complained of violence and lack of medical treatment, but the authorities allegedly failed to address or resolve the situation. In these circumstances, the IACHR is satisfied that the authorities were aware of the situation of the alleged victim, and that he invoked the remedies readily available to him as a practical matter, and thus satisfied the requirements of Article 46.

11. Finally, the petitioner alleges that he requested on several occasions copies of documents indispensable to prepare his defense, with no results. For its part, the State indicates that the petitioner had the right to appeal the decision of the public authority not to grant access to the documents. The IACHR notes that the petitioner did not receive a refusal of his requests, but rather letters indicating why the authority in question was not forwarding the requested information, such as: “we are unable to locate your file due to recent flooding in the parish;” “we will forward your request to another department which has the competence to process your application;” and “the transcript of your trial in the Circuit Courts is not yet ready.” In these circumstances, the Commission considers that in light of the absence of a definitive decision by the authorities, as well as the situation of the petitioner being an indigent prisoner, the measures he has taken provided the opportunity for the State to respond, and that as such it would not be reasonable to require him multiple judicial motions as a condition of admissibility.

12. The IACHR determined that the petitioner was excused from exhausting domestic remedies with respect to the allegations declared admissible. These violations are allegedly of an ongoing nature, as they began with his arrest on January 2004 and arguably continue to the present. Therefore, since the petition was presented in July 7, 2008, the IACHR concludes that the claims were lodged within a reasonable period of time.

VII. COLORABLE CLAIM

13. The IACHR notes that the petition contains allegations concerning: the delay in the process concerning the alleged professional misconduct of the petitioner’s lawyer in his criminal case; the inhuman and degrading treatment, poor medical attention, destruction of belongings and general conditions of detention; and the impossibility of obtaining information regarding the petitioner’s lawsuits and medical documents allegedly due to obstacles created by the State of Jamaica. Based upon the information provided, the Inter-American Commission finds that, if proved, these allegations tend to establish possible violations of the rights guaranteed by Articles 5, 8, 13, 21 and 25 of the American Convention.

14. The alleged victim argues that the Jamaican State violated Articles 9 and 17 of the Universal Declaration of Human Rights. The Commission is not competent to establish violations of this instrument, although it may take its terms into consideration in its interpretation of the American Convention, in light of the principles set forth in Article 29 of that treaty.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 13, 21 and 25 of the American Convention in accordance with its article 1.1;

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 in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.