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REPORT No. 88/18
PETITION 1077-07
REPORT ON ADMISSIBILITY

PANAMA CANAL WORKERS
PANAMA

Approved by the Commission electronically on July 26, 2018.

Cite as: IACHR, Report No. 88-18. Petition 1077-07 Admissibility. Panama Canal Workers.
Panama. July 26, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Union of Canal Workers and Union of Captains and Deck Officers of the Panama Canal ¹
Alleged victims:	Panama Canal workers
Respondent State:	Panama ²
Rights invoked:	Article 25 of the American Convention on Human Rights, ³ Article 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, ⁴ and Article XVIII of the American Declaration of Rights and Duties of Man ⁵

II. PROCEDURE BEFORE THE IACHR⁶

Filing of the petition:	August 21, 2007
Notification of the petition to the State:	November 13, 2007
State's first response:	January 27, 2008
Additional observations from the petitioner:	March 6 and August 19, 2008; February 13 and October 19, 2009; September 24, 2010; October 30, 2014; January 27, 2015; May 17 and September 12, 2016
Additional observations from the State:	June 6 and October 2, 2008; May 1, June 5 and December 17, 2009

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 ratification instrument on June 22, 1978) and Protocol of San Salvador (deposit of ratification instrument on February 18, 1993)

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 8 (Fair Trial), 24 (Equal Protection), 25 (Judicial Protection) and 26 (Economic, Social, and Cultural Rights) of the ACHR in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; Article 8 (Trade Union Rights) of the Protocol of San Salvador

¹ Through a communication received on May 17, 2016, the Union of Captains and Deck Officers of the Panama Canal requested to be formally acknowledged as a petitioner in consideration that at the filing of the instant petition its current members were part of the Union of Canal Workers. The State filed no objections to this.

² In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not participate in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "Protocol of San Salvador."

⁵ Hereinafter "Declaration" or "American Declaration."

⁶ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The representative of the Union of Canal Workers (hereinafter “OSECA”) claims that the Legislative Assembly of the Republic of Panama passed Law No. 19 of June 11, 1997 whereby the Panama Canal Authority is organized. The petitioner indicates that this law has provisions affecting the constitutional rights of Canal workers, as it prevents the application of any other legal or constitutional rule providing for wages, bonuses, jurisdiction or proceedings in their favor. Likewise, it specifically prohibits the right to strike, infringing article 69 of the Panamanian Constitution and the Supreme Court’s resolutions establishing that said right can be limited but not prohibited by a law.

2. The petitioner submits that, in view of the foregoing, on December 27, 2001 the National Confederation of Independent Union (hereinafter “CONUSI”), which does not include OSECA, filed a constitutional appeal against several articles and phrasings of said law. The petitioner alleges unwarranted delay on the part of the Supreme Court of Justice in resolving the constitutional appeal, which by the time this petition was lodged, it was over five years it had been pending resolution. To support this claim, he remarks that the attorney representing appellant CONUSI filed three motions to expedite proceedings, in October and November 2006 and in March 2007.

3. The petitioner emphasizes that once the constitutional appeal was admitted, the Attorney General’s Office issued its judgment within the 10 days period established by the Panama Judicial Code. However, he alleges the non-compliance with the established 10 days period for the presiding judge to issue a provisional sentence following the date the edict was docketed and issued. Therefore, he complains that the Supreme Court of Justice justified its delay by emphasizing the complexity of the case even when the Attorney General undertook an objective analysis on the merits in only 10 days. He also underlines that cases of equal or greater complexity have been settled by the Court in lesser time, thus he alleges an excessive delay in the issue of the decision. In view of this, he understands that the Court’s inaction was conspiratorial and reproachable, and that the administration of justice was not expeditious, which perpetuated the alleged human rights violations against the Panama Canal workers.

4. He claims that although the judgment on the constitutional appeal was issued on April 27, 2009—that is, during the admissibility procedure before the IACHR—the State did not afford effective or appropriate proceedings to obtain justice, because the Supreme Court of Justice took more than seven years to resolve the case. Moreover, he indicates that through said judgment it ruled the lawfulness of a law which bans the right to strike hence violates a fundamental right protected by the Panamanian Constitution and by Article 8 of the Protocol of San Salvador.

5. The representative of the Union of Captains and Deck Officers of the Panama Canal (hereinafter “UCOC”) adds that Canal workers are in a situation of defenselessness since the legal safeguards which the State asserts compensate for the restrictions set forth in Law No. 19 of 1997, like the constitutional rule establishing that labor conflicts with the Canal Authority are to be eventually settled through arbitration, are absolutely ineffective, unbinding and slow, and legitimize abuse on the part of employers. All this, he claims, violates rights such as workers’ freedom of association, their right to collective bargaining, to representation and, above all, to strike.

6. For its part, the State claims that domestic legal remedies were not exhausted because when the instant petition was filed the constitutional appeal was being processed and pending final resolution. Following the issue of the decision of April 27, 2009, the State reiterates that the instant petition was presented beforehand inasmuch as the domestic legal remedies afforded by the Constitution and the legal

system to the parties had not been exhausted, which violates compliance with Article 28.8 of the IACHR Rules of Procedure. The State also remarks that CONUSI, claimant in the constitutional appeal proceedings, was ensured access to domestic legal remedies and not prevented from exhausting them.

7. The State highlights, before and after the resolution of the constitutional appeal, that there was no unwarranted delay because the Supreme Court of Justice was unable to speedily resolve the appeal in view of the complexity and specificity of the matter. It argues that for the sake of objectivity, fairness and impartiality, the Court was compelled to undertake a complex study involving not only the confrontation of those provisions considered unconstitutional but also other articles of Law No. 19 of 1997, with all the rules of the Constitution and the international treaties to which Panama is a State Party. It claims that in addition to the foregoing it is necessary to consider the backlog of cases and the significant number of proceedings filed daily before the Supreme Court of Justice.

8. It submits that Law No. 19 of 1997 does not infringe workers' rights because—as established in the judgment on the constitutional appeal—the Constitution provides for Canal workers' right to impartial and expeditious compensation with a view to defending socio-economic and employment interests, like through an arbitration award, a remedy for the effective settlement of conflicts arising between workers and unions, and the Panama Canal Authority. It argues that the Supreme Court of Justice had understood that notwithstanding the restriction of the right to strike, the State's duty to ensure the uninterrupted transit of vessels must prevail for the sake of world trade activity and the international community, according to the provisions of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal of 1977. Therefore, it submits that the petition is inadmissible for there is nothing to demonstrate a possible violation of a domestic or constitutional rule on the part of Panama.

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

9. Both the petitioner and the State claim that the constitutional appeal was the effective judicial remedy established by the Constitution and the law for the settlement of the dispute concerning the passing of Law No. 19 of 1997. The petitioning party claims that the resolution of the case was unwarrantedly delayed and that the court's decision, once issued, perpetuated the violation of rights to the detriment of Panama Canal workers. The State, for its part, alleges the non-exhaustion of domestic legal remedies on the basis that when the petition was filed, the constitutional appeal was still pending resolution. Likewise, it stresses that the case was not unwarrantedly delayed because the matter was so specific and complex that the Supreme Court of Justice could not afford to resolve it lightly. Consequently, it requests that the petition be declared inadmissible.

10. The Commission has established the analysis on the compliance with the requirement set forth in Article 46.1.a of the Convention involves determining which is the effective remedy to be exhausted under the circumstances, that is, which remedy can afford protection of the affected right. In the instant case, the Commission notes that the claims filed by the petitioners basically involve alleged restrictions on the rights of Panama Canal workers through a national law. In this regard, the Commission takes into account that under the Panamanian Judicial Code a constitutional appeal was the appropriate legal remedy available to challenge the rules of Law No. 19 of 1997. Therefore, the IACHR believes that the petitioners have duly exhausted domestic legal remedies.

11. Moreover, the Commission confirms that the appeal, the motions to expedite proceedings and other legal procedures within the constitutional appeal proceedings were filed by CONUSI, which, as indicated above, is not related to OSECA. However, it observes that pursuant to the domestic legal framework, this remedy can be lodged by anyone through a proxy, and that the effects of a judgment concerning a law are *erga omnes*, that is, toward all the community.⁷ Given that the complaint filed by CONUSI was already being

⁷ For instance, see please Judgment of the Plenary of the Supreme Court of Justice of Panama, August 11, 2004, constitutional appeal filed by Miguel Antonio Bernal Villalaz and Luis Rogelio García, against article 1 and 4 of Law No. 24 of April 8, 2013. (In Spanish.)

processed by the Supreme Court of Justice, the Commission believes that the petitioners did not need to file another constitutional appeal. Furthermore, the Commission takes into account that the final resolution on the proceedings directly affects the petitioners and workers' situation, for they are the recipients of a special labor system regulated by Law No. 19 of June 11, 1997.

12. In this regard, the Commission observes that domestic remedies were exhausted on April 27, 2009 through the resolution issued by the Supreme Court of Justice, and that the petition was presented on August 21, 2007. Consequently, domestic remedies were exhausted while the case was under study for admissibility. Based on the Commission's doctrine, the analysis concerning the requirements established in Articles 46 and 47 of the Convention must be made in light of the situation existing at the time the Commission rules on the admissibility or inadmissibility of a complaint, since the time of filing of the petition and the time of the decision on admissibility are different.⁸ As a result, the IACHR considers that the petition meets the requirement established in Article 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the Commission believes that the alleged discrimination, and the violations of labor rights through Law No. 19 of June 11, 1997 to the detriment of Panama Canal workers—such as the alleged ban on the right to strike and the alleged unwarranted delays in the proceedings on the constitutional appeal filed against said law—could establish possible violations of Article 8 (Fair Trial), 24 (Equal Protection), 25 (Judicial Protection) and 26 (Economic, Social, and Cultural Rights) of the American Convention, in relation to Articles 1.1 and 2 thereof; and Article 8 (Trade Union Rights) of the Protocol of San Salvador.

14. In regard to the purported violation of Article XVIII of the American Declaration (Fair Trial), the IACHR has previously established that once the American Convention becomes effective in a State, the Convention, not the Declaration, becomes the main source of law to be enforced by the Commission provided that the petition concerns an alleged violation of substantially identical rights established in both instruments.⁹ In the instant case, given that the right to a fair trial is provided for in Article 8 and 25 of the American Convention, the Commission's analysis on the merits shall be made in the light of the latter international treaty.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 24, 25 and 26 of the American Convention, in connection with Articles 1.1 and 2 thereof; and Article 8 of the Protocol of San Salvador; 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 26th day of the month of July, 2018. (Signed): Margarete May Macaulay, President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁸ IACHR, Report No. 108/17. Petition 562-08. Admissibility. Pedro Herber Rodríguez Cárdenas. Colombia. September 7, 2017, par. 14; IACHR, Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, par. 27.

⁹ IACHR, Report No. 47/10, Petition 1325-05. Admissibility. Estadero "El Aracatazo" Massacre. Colombia. March 18, 2010, par. 43; IACHR, Report No. 13/18, Petition 345-08. Admissibility. Ángel García Casimiro. Mexico. February 24, 2018, par. 11.