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REPORT No. 49/17
PETITION 384-08
REPORT ON ADMISSIBILITY

WORKERS DISMISSED FROM ECOPETROL
COLOMBIA

Approved by the Commission at its session No. 2085 held on May 25, 2017
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Ecopetrol. Colombia. May 25, 2017.

REPORT No. 49/17¹
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 REPORT ON ADMISSIBILITY
 WORKERS DISMISSED FROM ECOPETROL
 COLOMBIA
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Colombian Commission of Jurists
Alleged victims:	Luis Carlos Díaz García and others ²
State denounced:	Colombia
Rights invoked:	Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 16 (Freedom of Association), 24 (Right to Equal Protection) and 26 (Progressive Development) of the American Convention on Human Rights, ³ and Article 8 of the Protocol of San Salvador

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	April 1, 2008
Date on which the petition was transmitted to the State:	May 27, 2010
Date of the State's first response:	September 6, 2010
Additional observations from the petitioning party:⁵	November 13 and 17, 2010
Additional observations from the State:	February 11, 2011

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes; American Convention (instrument of ratification deposited on July 31, 1973) and Protocol of San Salvador (instrument of ratification deposited on December 23, 1997)
Competence <i>Ratione materiae</i>:	Yes; ACHR and Protocol of San Salvador

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; under the terms of Section VI
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¹ Pursuant to Article 17.2(a) of the IACHR's Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the discussion of, or the decision on, this matter.

² The petition involves 110 alleged victims, who are individualized in the document annexed hereto.

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

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

⁵ On February 27, 2013 and April 17, 2014, other petitioners' communications were received; however, they were not transmitted to the State inasmuch as they had no substantive observations.

Rights declared admissible	Articles 2 (Domestic Legal Effects), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 16 (Freedom of Association), 25 (Right to Judicial Protection) and 26 (Progressive Development), in connection with Article 1.1 of the American Convention, and Article 8 of the Protocol of San Salvador
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception to Article 46.2(a) of the ACHR
Timeliness of the petition:	Yes; under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners claim that the alleged victims were members of the Workers' Trade Union (USO). They assert that it came into being as the union for workers in Ecopetrol (hereinafter "Ecopetrol" or "the company"), which belonged to the State at the time that the facts took place. They submit that particularly between 2002 and 2007 Ecopetrol carried out a series of anti-union and repressive actions that deprived the union of participating in the protection, defense and promotion of workers' interests, which eventually weakened the organization. Likewise, they claim that these anti-union practices were implemented in a national framework of violence, persecution and criminalization of unionized workers. These practices were particularly carried out by the military forces as well as by paramilitary groups, in the framework of a national security doctrine under which unions were seen as the "enemy within."

2. The petitioners assert that those practices by Ecopetrol consisted in the indiscriminate filing of disciplinary proceedings and mass dismissals on the grounds of workers' participation in strikes and demonstrations. They submit that these types of protests were declared unlawful by the Ministry of Social Protection, which lacked an independent view inasmuch as the company was state-owned. They also claim that these decisions were made based on a law that forbids the organization of trade unions in the public sector, infringing the rights embodied in the international treaties. They assert that the company many times ordered the militarization of its headquarters and the clearance of the workplace in order to discourage meetings and protests, and to intimidate unionized workers. The petitioners submit that the company encouraged the promotion unionized workers to managerial positions on condition that they withdrew from the union. They assert that sometimes union leaders were not allowed to enter the workplace.

3. In addition, they indicate that the company designed a *Skills and Behavior Enhancement Program* aimed at forty-three union activists, to adjust their behavior to company's the values and principles. They claim that the workers, as a result, were forced to stay several days in rooms without daylight and ventilation, listening to the company's psychologists recommend them to change their behavior, and to lawyers explain to them on the disciplinary offenses that their union activities might establish. They assert that the program was suspended by a protection ruling, on the grounds that it violated the right to equality. They assert that these facts also violated their right to humane treatment.

4. The petitioners assert that the alleged victims were subjected to disciplinary proceedings by bodies of the same company. They indicate that by March 2008 all the alleged victims had been dismissed: some were dismissed for participating in a strike on November 10, 2002; others, for participating in a protest on March 24, 2004; others, as a result of disciplinary proceedings against them. They submit that some of the alleged victims lodged union law proceedings while others filed labor law proceedings. By the time this petition was filed, some of these trials had been settled against the alleged victims, while others still were to be settled. Finally, they indicate that some of the alleged victims filed writs of protection of constitutional rights, all of which were settled by adverse judgments.

5. The petitioners allege that although these actions were aimed to challenge the lawfulness of the dismissals, these were ineffective in providing the protection foreseen in the Protocol and the Convention,

due to the existence of rules contrary to the protection of union rights and the lack of independent and impartial bodies in a context of anti-union repression. Moreover, they assert that the alleged victims were unable to access independent instances and protection mechanisms that would assess, and rule on, each and every single case of persecution to which they were subjected, such as the militarization of the company's headquarters and the intimidating and discouraging practices. To conclude, the petitioners claim that there are no remedies that appropriate and effective to fully redress the damages caused by all the violations of rights, and they claim that concerning the requirement of prior exhaustion of domestic remedies, the exception specified in Article 46.2(a) of the Convention applies. They further assert that the petition was filed within a reasonable time.

6. The petitioners assert that in June 2004, the USO adhered to a complaint lodged by the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD) and the Confederation of Workers of Colombia (CTC) with the Committee on Freedom of Association of the Governing Body of the International Labor Organization (ILO), for the violation of Conventions No. 87 (Freedom of Association and Protection of the Right to Organize Convention) and No. 98 (Right to Organize and Collective Bargaining Convention) thereof. They indicate that despite the USO's participation in that complaint, there is no duplication of procedures as the complaint before the ILO was filed by trade unions – the only ones entitled to file petitions to that body– whereas this petition to the IACHR was filed in favor of individual persons. They claim that the petition to the ILO refers to violations of the ILO's Conventions and to other facts apart from those included in the petition to the IACHR, whereas the petition to the IACHR refers to violations of the Convention and the Protocol. Lastly, the petitioners assert that, in any case, the decisions by the ILO are optional recommendations while the decisions by the Inter-American Human Rights System are binding and their compliance mandatory.

7. The petitioners submit that the abovementioned situation violated Articles 15 and 16 of the Convention and Article 8 of the Protocol of San Salvador, particularly due to the militarization and intimidation practices, along with the intimidating effect of dismissals; Article 13 of the Convention, as a result of the restrictions to their liberty of expression and protest and, particularly, the creation of the *Skills and Behavior Enhancement Program*; Articles 8 and 25 of the Convention, in view of the lack of remedies to seek justice for the violations suffered, and the lack of independence and impartiality on the part of the decision-making bodies as regards the settlement of the industrial dispute; and Article 45 of the OAS Charter –comprising the right to labor, the freedom of association, the right to collective bargaining and the workers' right to strike–, since bargaining was discouraged.

8. On the other hand, the State asserts that the petition is inadmissible on the grounds of duplication of international procedures since there is a word-by-word transcription of segments from the complaint before the ILO to this petition, the claims are the same, the persons resorting to the IACHR are the same as those who, in another time, resorted to the ILO as USO's members. It claims that the fact that the USO resorted to the ILO together with other organizations does not overrule the fact that the parties are the same. It also indicates that the proceedings before the ILO refer to some of the rights whose violation is herein denounced.

9. Likewise, the State submits that the Commission must dismiss the contextual information presented herein since the petitioners did not prove their connection with the alleged victims' specific circumstances, meaning that the petition must refer only to facts that have been proved in the domestic proceedings. In addition, the State claims that the facts alleged do not establish violations of the Convention or the Protocol since the industrial dispute between Ecopetrol and the USO was settled under lawful procedures, in light of due process of law and the respect of all rights. Likewise, it asserts that the petitioners were not been able to prove that the procedures applied were partial or contrary to due process, or that the domestic judgments were arbitrary. It submits that the fact that the rulings were adverse to them does not deprive them of their lawfulness nor render them into violations of the ACHR. In this regard, the State claims that if the petition is admitted, the IACHR would work as a fourth instance, which is beyond its mandate.

10. Finally, concerning the requirement of prior exhaustion of domestic remedies, the State asserts that the victims were able to access effective remedies and that, in any case, at the time this petition

was filed there were several proceedings underway. The State indicates that at the time of submitting its observations, it was not fully informed about the proceedings mentioned by the petitioners.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. As regards the requirement of prior exhaustion of domestic remedies, the Commission notes that the alleged victims resorted to a series of remedies to challenge their dismissal. The State, in turn, claims that the petition is inadmissible since some of these proceedings were pending resolution at the time it was presented. The Commission notes that the State has not submitted information showing whether these legal actions are still underway before domestic courts.

12. With respect to the remedies exhausted by the alleged victims, the Commission understands that the petitioners' arguments concerning the lack of independence on the part of the bodies ruling on their labor issue, as well as the purported existence of a legal framework contrary to the protection of union rights and the alleged context of anti-union repression are aspects to be analyzed in the merits stage. This is so, inasmuch as these circumstances are part of the petitioners' concrete pleadings in relation to the alleged violation of Articles 8 and 25 of the Convention.

13. In addition, the petitioners allege the lack of domestic remedies to file claims, particularly, against the alleged anti-union practices, other than the concrete dismissals. The Commission notes that the State did not contest this aspect of the petition. In this regard, the Commission believes that the exception established in Article 46.2(a) of the Convention and Article 31.2(a) of the Rules applies.

14. Concerning the timeliness of the petition, under Article 32 of the Commission's Rules, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time. The Commission notes that the facts described herein took place from 2002 to at least 2007, with alleged effects that persist to this date, and that the petition was filed on April 1, 2008. In this regard, the Commission considers that this requirement is met.

15. In relation to the requirement of duplication of procedures, under the Commission's jurisprudence,⁶ recommendations by the ILO's Committee on Freedom of Association do not have a legally binding effect nor are of a compensatory nature. Therefore, the Commission believes that the procedure at issue is not equivalent to the one established for the processing of individual petitions before the inter-American system. In this regard, the requirement set forth in Articles 46.1(c) and 47 (d) of the Convention and Article 33 of the IACHR's Rules is met.

VII. COLORABLE CLAIM

16. In view of the elements of fact and law presented by the parties, the Commission believes that the facts denounced by the petitioners, if proved, may establish violations of the rights protected by Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 16 (Freedom of Association), 25 (Right to Judicial Protection) and 26 (Progressive Development), in connection with Article 1.1 of the American Convention. At the same time, the Commission considers that, in the merits stage, it must be analyzed whether the alleged prohibition to organize trade unions in the public sector could establish a violation of Article 2 (Domestic Legal Effects) of the Convention.

17. As to the complaint for the purported violation of Article 24 (Right to Equal Protection) of the Convention, the IACHR notes that the petitioners did not submit arguments or grounds sufficient to *prima facie* consider its possible violation by the State.

⁶ IACHR, Report No. 28/13 (Admissibility), Petition 1345-05, Professors of Chanaral, Chile, March 20, 2013, paras. 42, 43.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 2, 5, 8, 13, 15, 16, 25 and 26 of the American Convention, in connection with Article 1.1 thereof; and Article 8 of the Protocol of San Salvador;
2. To find the instant petition inadmissible in relation to Article 24 of the American Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. 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 Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.

ANNEX

ALLEGED VICTIMS

1. Luis Carlos Díaz García
2. Jorge Eliecer Palencia Alvarino
3. Juliano Hernández García
4. José Francisco Blanco Landínez
5. Eduar Humberto Heredia Duarte
6. Javier Hernández Acosta
7. Adriano Ochoa Gómez
8. Nilson Pérez López
9. Salomón Rojas Cañas
10. Carlos Arturo Sarmiento Centeno
11. Clemente Salas Yanes
12. Nestor William Parrado Ruiz
13. Manuel Jesús Coronado Enríquez
14. Pedro Nel Quintero Castañeda
15. Juan Bernabé López caro
16. Manuel del Cristo Pianeta Matute
17. Carlos Edmundo Ceballos Castro
18. Oscar Ovidio Martínez Morales
19. José Franquis Ibarquen Ibarguen
20. Omar Augusto Mejía Salgado
21. Abel Antonio Triana Pérez
22. Juvencio Seija Mejía
23. Fernando Coneo García

24. Alirio Rueda Gómez
25. Nelson Abril Hernández
26. Dagoberto Tovar Gutiérrez
27. César Augusto Muñoz Suárez
28. Olga Lucía Amaya Pérez
29. Jaime Pachón Mejía
30. Ricardo Parada Escaño
31. Jorge Alberto Zambrano Ramírez
32. Juan Carlos Aguilar Durán
33. Martín Emilio Rendón Castillo
34. Carlos Alonso Ardila Plata
35. Reynaldo Mantilla Flórez
36. Wilson Alfredo Villalba Giraldo
37. Alfredo Salazar Díaz
38. Leonardo Mauricio González Martínez
39. Ariel Corzo Díaz
40. Moisés Barón Cárdenas
41. Germán Emilio Sánchez Martínez
42. Carlos David Quijano
43. Fernando Londoño Díaz
44. Jimmy Alexander Patiño Reyes
45. Alexander Domínguez Vargas
46. Martín Fernando Ravelo Ravelo
47. Lenin León Ojeda
48. Juan Carlos Espinosa Rey

49. Olibardo Vera Barón
50. Gustavo Rojas Rojas
51. Carlos Arturo Zambrano Camacho
52. Alexánder del Cristo López
53. Ramón Manduano Urrutia
54. Freddys Elpidio Nieves Acevedo
55. Alfonso Acosta Viña
56. Iván Botero Osorio
57. William Hernán Chanchí
58. Nelson Martín Luna Mora
59. Wilmer Hernández Cedrón
60. German Polanco Castillo
61. Lavinis Arzuza Alcántara
62. Manuel Francisco Palomino Martínez
63. Luis Carlos Zapata Araque
64. José Ramiro Luna Martínez
65. Gerber Linington Castro Salazar
66. Yomber Sierra Ospina
67. Alfonso Rafael Dovale Flórez
68. Carlos Enrique Padilla Muñoz
69. Francisco Antonio Sepúlveda Gamboa
70. José Antonio Meneses Becerra
71. Luis Alberto Ramos Arenilla
72. Ángel de Jesús Díaz Rodríguez
73. Hermes Francisco Montiel Puche

74. Jaime Villadiego Hernández
75. Elvia Vesga Rodríguez
76. Víctor Manuel Flórez
77. Guillermo de Jesús Duque Pedrozo
78. Álvaro Rueda Duque
79. Miguel Antonio Gómez Calderón
80. Gabriel Arturo Sepúlveda Cáceres
81. Víctor Julio Bayona Arévalo
82. Roberto Guerrero Ramírez
83. Álvaro Meléndez Arroyo
84. Guillermo Eduardo Lastre Castillo
85. Adalberto Pérez Hernández
86. Raúl Alberto Gómez Buitrago
87. Reinaldo Rey Coronel
88. Pablo Ascensio Flórez
89. Luis Carlos Castillo Santos
90. Álvaro Gómez Lizarazo
91. Luis Ernesto Molina Velásquez
92. Héctor Carillo Villamizar
93. Ángela Fiallo Marín
94. Rómulo Navarro García
95. Rafael Enrique Torres Noguera
96. Ramiro Medina
97. Hernando Hernández Pardo
98. Álvaro Remolina Gutiérrez

99. José Miguel Vera Meza
100. Pedro Julián Cote Parra
101. Salomón Ayala Vásquez
102. Mario García Ochoa
103. Helí Eduardo Estupiñan Angarita
104. Jairo Alberto Suárez Murcia
105. Fernando Jiménez Chaparro
106. Luis Carlos Cepeda Rueda
107. Jhon Fredy Restrepo Yepes
108. Pedro Becerra Padilla
109. Jaminthon Meza Alvarado
110. Alexander Giovanni Campos Vega