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International Transport Workers' Federation
Federación Internacional de los Trabajadores del Transporte
Fédération internationale des ouvriers du transport
Internationella Transportarbetarefederationen
Internationale Transportarbeiter-Föderation
Международная федерация транспортников
التنظيم عالمياً، النضال من أجل حقوقنا

Submission of the International Transport Workers' Federation to the 3rd UPR Session for Panama, 3 October 2019

1. In advance of the Universal Periodic Review of Panama due to take place in April-May 2020 the International Transport Workers' Federation (ITF), a global union federation representing 18.5 million members, from around 670 affiliates in 147 countries, submits the following information on behalf of workers, its affiliate union members and labour rights defenders in Panama.

2. In summary, the major concern of the ITF relates to the government denial to Panama Canal workers of the right to strike and a failure to ensure sufficient compensatory guarantees to offset that restriction of the right to freedom of association guaranteed under ILO Convention 87.

State Obligations under International Law

3. Panama ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977. Article 22 of the ICCPR protects the right to freedom of association with others, including the right to form and join a trade union to protect one's interests. In accordance with articles 7 and 8 of the ICESCR, the state is obliged to respect the right to just and favourable conditions of work and the right to form and join trade unions of one's own choice, including the right to take industrial action.

4. Panama ratified the International Labour Organization (ILO) convention on freedom of association and the protection of the right to organise (C87) in 1958, and the Convention on the right to organise and collective bargaining (C98) in 1966. The right to strike is equally protected under article 3 of C87.

5. Panama's application in law and practice of ILO Conventions 87 and 98 form the basis of this submission.

Panama's Previous UPR Session

6. In its previous UPR review session in 2015 (A/HRC/30/7, para 37), Ireland noted its concern in relation to reports of restrictions on freedoms of assembly and associations, in particular in relation to trade unions. It made recommendations to Panama to fully respect its international obligations regarding the freedoms of assembly and association, in particular with regard to the activities of trade unions, and ensure that its national legislation complies with these obligations (para 90.93).

7. The ITF can confirm, through its affiliate Unión de Capitanes y Oficiales de Cubierta (UCOC, or Captains and Deck Officers Union), that these concerns are ongoing in relation to workers on the Panama Canal and can report no progress in this regard.

National Labour Law

8. The Panama Legislative Assembly Law No.19 constitutes the Organic Law of the Panama Canal (Law 19) and, inter alia, regulates industrial relations on the Canal. Section 92 of the Organic Act establishing the Panama Canal Authority (PCA) classifies the Canal as an international public service and establishes that its operation may not be interrupted in whole or in part or diminished for any reason by strike action, go-slows or any other unjustified work stoppage. This prohibition is based on the fact that the Canal is viewed not as an “essential” service but as an international “public” service. The Law provides for two compensatory avenues for dealing with industrial relations disputes at the Panama Canal.

9. The first involves the “Labour Relations Board” (the Board) which, among other things, has the authority to resolve any disputes under its jurisdiction via binding decisions. Its jurisdiction covers negotiability disputes, impasse resolution and complaints of unfair labour practices.¹ These decisions may not be appealed unless they are in conflict with Law 19, in which case the appeal must be brought before the Administrative Disputes Section of the Supreme Court of Justice, whose decision shall be definitive and binding.²

10. The second procedure concerns collective bargaining agreements, which are required by Law 19 to establish grievance procedures, including arbitration and alternative dispute resolution mechanisms, which shall be binding for both parties³. An appeal can only be made when the judgment has been based on an erroneous interpretation of the law or regulation, the arbitrator has shown clear bias to one side or due process has not been complied with.⁴

Labour Rights Situation in the Panama Canal

11. The Government of Panama and the PCA deny Panama Canal workers the right to strike. The ITF considers that the conditions necessary, as stipulated by the Committee on the Freedom of Association of the ILO, to completely deny Panama Canal workers the right to strike and thus their freedom of association rights are not present here.

12. Furthermore, the compensatory guarantee processes to resolve industrial disputes for workers deprived of their right to strike are insufficient. A number of cases have been successfully pursued by UCOC and the ITF through the Board procedure as outlined above, but the PCA appeals every determination made in the workers’ favour to the third chamber of the Supreme Court, which can take five years to complete. It refuses to implement any determinations until upheld by the Supreme Court. This has never been settled in under a year. The PCA’s practice of appealing all unfavourable rulings and arbitration awards for the purpose of delaying their implementation, combined with the denial of the right to strike amounts to a gross violation of the principles of freedom of association (see ILO complaint referenced below for more detail).

13. The ITF and UCOC, as well as the Unión de Prácticos del Canal de Panamá (UPCP), Unión de Ingenieros Marinos (UIM) and Sindicato del Canal de Panamá y del Caribe (SCPC),

¹ See Law 19, Article 113.

² Law 19, Article 114.

³ Law 19, Article 104.

⁴ Law 19, Article 107.

submitted a complaint in August 2014 to the ILO Committee of Freedom of Association (CFA). This case 3106 complained of the prohibition of the right to strike for the worker without sufficient compensatory guarantees, as well as obstacles to the enforcement of arbitration awards, obstacles to the granting of facilities to workers' representatives, absence of consultation and anti-union practices.⁵ It claims hindrance of worker representative privileges, failure to fulfil commitments established in collective agreements and imposing unilateral changes in working conditions.

14. In 2016, the CFA requested the government, "in light of all the statistics on the length of the proceedings established as compensatory guarantees, including the frequency of appeals to the Supreme Court, to facilitate dialogue with the social partners in order to ensure efficiency and rapidity of these procedures for dealing with complaints as compensatory guarantees" as well as social dialogue "on the existing representation privileges and their implementation in practice in light of the principles of freedom of association" (Para 795).

15. The government and the PCA have thus far failed to directly address issues raised with the ILO CFA in Case 3106. In fact, efforts to undermine the union have since intensified.

16. Despite operations in the Canal (and resulting workload) having significantly changed following expansion of the Canal, the PCA refuses to bargain with the union and tug personnel have suffered threats and intimidation. Since there is a shortage of captains, as a result of poor planning and analysis, the PCA enforces mandatory overtime, with failure to comply resulting in severe disciplinary action (three tug boat captains were facing dismissal after tying up due to fatigue in 2018).

17. The PCA has made it clear it will not meet with the union, has failed to facilitate dialogue with the UCOC and union communications are ignored. While it is true that the union has participated in internal bodies, such as the labour–management council, these are committee meetings that are not outcome-based and constitute mere formalities.

18. The ITF has also made submissions under ILO Convention 87 summarising the PCA's refusals to bargain, attempts to undermine the union and threats and intimidation of workers.

19. In October 2018, the ITF launched an independently commissioned report on the fatigue and serious health and safety risks in relation to tugboat captains in the new Neopanamax lock.⁶ The PCA response to this report was unfortunately aggressive, rather than being open to transparent dialogue with the UCOC, who represent the tugboat captains, to find solutions to these safety risks on the Canal. The PCA refused invitations to participate in the study and forbade access to the PCA facilities for the experts carrying out the research.

⁵ Case No 3106 (Panama) - Complaint date: 10 August 2014, see report in which the committee requests to be kept informed of development - Report No 380, October 2016 at https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3302026

⁶ https://www.itfglobal.org/media/2004172/itf_panama_report_051218_slr.pdf

Recommendations to the State

20. The ITF urges the government of Panama to:

- In line with the CFA recommendations in case 3106, facilitate dialogue between the relevant authorities and the social partners in order to ensure efficiency and rapidity of the procedures for dealing with industrial disputes forming compensatory guarantees to the denial of the right to strike for tug boat captains on the Panama Canal.
- In light of all the statistics on the length of the proceedings and the frequency of appeals to the Supreme Court, consider reviewing the approach of the PCA to industrial disputes, to ensure tugboat captains benefit from genuine freedom of association rights.
- Refer to the ITF 2018 report on fatigue among Panama canal tugboat captains and implement recommendations to improve health and safety on the Panama Canal, including:
 - Requiring the PCA to restore second captain during transit through new locks.
 - Involving tugboat captains in decisions related to their tasks, working conditions and scheduling.
 - Establishing an entity independent of the PCA to oversee occupational health and safety risks and maritime accidents on the Canal.