

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 88/03; Petition 11.533
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Metropolitan Nature Reserve v. Panama
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
Citation: Metropolitan Nature Reserve v. Panama, Petition 11.533, Inter-Am. C.H.R.,
Report No. 88/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

Terms of Use: Your use of this document constitutes your consent to the Terms and
Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On August 11, 1995, Rodrigo Noriega referred a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission”) on behalf of the citizens of the Republic of Panama. The petition charges the Government of Panama (hereinafter “the State”) with violations of the Panamanian people’s right to property as vested in the Metropolitan Nature Reserve following adoption of Public Law 29 on June 23, 1995 which authorized construction of a public roadway through it. Specific violations of Articles 8; 19; 21(1) and (2); 23(1)(a) and (c); 24; and 25(1), (2)(a), (b), and (c) of the American Convention are alleged. These arise given the Nature Reserve’s previous designation as a protected area of environmental, scientific, and cultural value for all the citizens of Panama, so established by Public Law 8 in 1985. The petitioner thus considers the Nature Reserve to be their property rather than that of the State. On that basis, he alleges, the State’s failure to consult entities responsible for the Nature Reserve about the planned road project in effect constitutes a violation of the citizens’ right to maintain that designated area for use by environmental, civic and scientific groups whose interests the construction harms.

2. The State, for its part, declares that it acted under color of constitutional law to relieve Panama City’s heavy traffic congestion, and that it properly consulted public and private institutions within the environmental impact study it commissioned to that end. The State adds that in building the North Corridor project aimed at cutting pollution in the city, it has in fact met its duty to promote environmentally sound development.

3. Having analyzed the parties’ respective positions, the IACHR concludes that under Article 47 of the American Convention, the petition is inadmissible since it fails to identify individual victims and it is overly broad. The Commission likewise resolves to notify the parties

of this decision and to proceed with its publication and inclusion in the Annual Report it will submit to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On behalf of the citizens of the Republic of Panama, the petitioner submitted a petition to the IACHR on August 11, 1995.

5. On September 8, 1995, the Commission forwarded to the State of Panama a copy of the petition in pertinent part, granting a 90-day period in which the State could present its observations on the matter.

6. On January 11, 1996, the State submitted relevant observations. It indicated that on December 29, 1994, the Ministry of Public Works signed an agreement with the firm PYCSA PANAMA S.A. under which terms and prior to construction, the licensee undertook to carry out at its own expense a study aimed at mitigating the environmental impact of the project.

7. On March 8, 1996, the Commission informed the petitioner that it had studied the case at a recent meeting at which an admissibility report was approved declaring the petition inadmissible given its failure to exhaust domestic remedies, specifically before the Supreme Court, charging the government with having acted unconstitutionally.

8. On December 10, 1996, petitioners provided the IACHR with additional information regarding the issue of exhaustion of remedies under domestic law.

9. On January 2, 1997, the Commission forwarded to the State in pertinent part such additional information received from the petitioners and granted it a period of 60 days in which to present any relevant observations.

10. On May 21, 1997, the State sent the Commission a report (received on May 23, 1997) rebutting the allegations presented in the petitioners' complaint.

11. The Commission immediately forwarded to the petitioners observations received from the State, in pertinent part, followed by additional information sent subsequently on which the petitioners were also asked to comment.

III. POSITION OF THE PARTIES

A. Position of the petitioners

12. The petitioner maintains that State action constitutes an infringement of the right to property of the citizens of Panama[FN1] as vested in the Metropolitan Nature Reserve. Violations are alleged specifically under Articles 8; 19; 21(1), and (2); 23(1)(a) and (c); 24; and 25(1) and (2)(a), (b) and (c) of the American Convention.

[FN1] The petitioner alleges that while the right to property of all Panamanians has been violated, the following environmental, civic, and scientific groups are specifically harmed: Residents of Panama City; Friends of the Metropolitan Nature Preserve; The Audubon Society of Panama; United Civic Associations; and The Association for Research and Protection of Panamanian Species.

13. The petitioner alleges that the State violated the people of Panama's right to property in the Metropolitan Nature Reserve as well as their right to due process, recognized by national legislation. He explains that Law 8 of 1995 had designated an area for the furtherance of environmental, scientific and cultural interests. The Metropolitan Nature Reserve, as it was named, became the principal natural site of Panama City offering its people a green space free of vehicular congestion.

14. In addition, the petitioner notes that Public Law 8 established a collegial procedure for decision-making with regard to the Nature Reserve: non-governmental organizations, city and national government were to resolve issues in concert. Regardless, the State announced at the end of 1994 its intention to expand the metropolitan road network by cutting through the environmentally protected area. It did so in direct contravention of the terms of the ESTAMPA Study on Transportation in the Metropolitan Area of Panama City, and without prior environmental impact assessments in hand.

15. The petitioner reports that the State then proceeded to reform Public Law 8 of 1985 in order to authorize construction of a highway through the Metropolitan Nature Reserve. In so doing, he contends that the State violated Article 21(1) and (2) of the Convention since the citizens' right to property in an environmentally, scientifically and culturally protected area was curtailed without reason of public utility or social interest.

16. Additionally, the petitioner argues that Article 25 of the American Convention has been contravened since the construction work has proceeded despite legal action taken by non-governmental organizations. Likewise, Article 19 of the Convention establishing the rights of the child has been violated to the detriment not only of this generation of children, but that of future generations as well.

17. The petitioner sought the good offices of the Commission per Article 48(f) of the American Convention in hopes of reaching a friendly settlement of the matter whereby the government would suspend the road construction. It was also hoped that civil servants fired because of their opposition to the project would be reinstated in their positions. Their names were to be submitted subsequently but as yet no list has been received.

18. On December 10, 1996, the petitioner sent the Commission a copy of the judgment rendered by the Supreme Court of Panama (received December 18, 1996) in the matter of The Audubon Society of Panama, the environmental organization which sued to have Public Law 29 (adopted June 23, 1995) in order to have it declared unconstitutional. The High Court ruled on September 13, 1996 that the law is not unconstitutional. Without prejudice to other legal mechanisms that may be brought to impugn the legality of the North Corridor construction

project and its potentially adverse environmental impact, Public Law 29 at issue did not in any event infringe the basic charter, the Court held.

B. Position of the State:

19. The State affirms that it has acted within the scope of its constitutional powers and in response to the serious traffic gridlock of greater Panama City. It avers that in 1984 it commissioned a study known as ESTAMPA that was carried out jointly by the Japanese International Cooperation Agency (JICA) and the Ministry of Public Works on which basis the North Corridor project was conceived.

20. The State explains that Public Law 8 of 1985 designated an area of environmental, scientific and cultural protection within the limits of Panama City. It became the Metropolitan Nature Reserve and offers the residents of Panama a green space for their enjoyment. The State notes also that provisions of the law do authorize highway construction meant to ease the flow of traffic exiting the metropolitan area, as outlined in the ESTAMPA project.

21. The State alleges that paragraph (f) of Public Law 8 of 1985 contemplates such road works as ESTAMPA envisages building through the Metropolitan Nature Reserve. To that end, public and private institutions were consulted by the State to assess environmental impact. Written and oral opinions received were factored into the general analysis of the project.

22. The State submits that adoption of Public Law 29 on June 23, 1995 enabled it to reconfigure the physical requirements of the project to accommodate an extension of the Metropolitan Nature Reserve. To offset the use of Reserve lands for construction of the North Corridor Project, an extra 590 hectares were added to the surface area encompassed by the Camino de Cruces National Park adjoining the Metropolitan Nature Reserve.

23. Furthermore, the State points out, the National Environmental Authority met with PYCSA PANAMA S.A.—the firm contracted by the Ministry of Public Works to oversee construction—to ensure compliance with measures designed to mitigate the project's impact on the environment. These have been the subject of successive company progress reports. They are also currently under review by the Regional Administration Board of Panama City; Inspection Protocols are being designed to monitor compliance with the mitigation measures. The State requests that the Inter-American Commission hold inadmissible the petition before it because the route selected for construction of the North Corridor project is actually the one deemed most favorable. Because it will not adversely impact Camino de Cruces National Park, nor Soberania National Park, the chosen option is considered to be less damaging to the local ecological system than the one originally contemplated in the ESTAMPA project.

24. The State informs that the AUDUBON SOCIETY brought suit before the Supreme Court of Justice to declare unconstitutional Public Law 29 of June 23, 1995. The Supreme Court upheld the law's constitutionality since it violates neither the basic charter nor any of the norms and standards allegedly infringed. The High Court also established that other legal recourses exist to impugn the legality of the construction project.

25. Finally, the State refers to the issue of traffic congestion as a source of air and noise pollution. It affirms that by reducing such pollution levels, construction of the North Corridor in effect fulfills the State's mandate to promote environmentally sound development.

IV. ANALYSIS OF ADMISSIBILITY

Competence of the Commission

26. Article 44 of the American Convention sets forth the Competence of the Commission. It establishes that "(a)ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

27. It is worth recalling that, unlike other systems designed to protect human rights, the Inter-American System allows various categories of petitioners to submit petitions on behalf of victims. The wording of Article 44 is indeed broad. Referral to the Commission of petitions containing denunciations or complaints of violation of the Convention by a State Party does not require (unlike established practice under the European System or under the United Nations Human Rights Committee) that petitioners be victims per se. There is no requirement that petitioners themselves have a direct or indirect personal interest in the adjudication of a petition. Neither is there a requirement that they be legally empowered by the alleged victims to represent those victims.[FN2]

[FN2] See generally Tom Zwart, *The Admissibility of Human Rights Petitions: The Case of the European Commission of Human Rights and the Human Rights Committee* (Dordrecht, Boston: M. Nijhoff, 1994), pg. 50 et seq. See also IACHR Case 1954, Report 59/81, IAHR 1981-1982 Annual Report, and IACHR Case 2141, Resolution 23/81, IAHR 1980-1981 Annual Report cited in Monica Pinto, *The Complaint Before the Inter-American Commission on Human Rights* (Del Puerto Publishers, 1993), pg. 35.

28. The jurisprudence of this Commission nonetheless establishes that for a petition to be considered admissible, interpretation of Article 44 of the Convention must be construed to mean that there do exist specific, individual and identifiable victims.[FN3] Petitions filed in the abstract and divorced from the human rights of specific human beings shall not be admissible.[FN4]

[FN3] See IACHR, Case 12.404, Report No.51/02 (Peru), IACHR 2002 Annual Report.

[FN4] See IACHR, Case 11.553, Report No. 48/96 (Costa Rica), IACHR 1996 Annual Report.

29. An analysis of the Commission's jurisprudence on how Article 44 of the Convention has been applied shows that competence ratio personae over individual petitions has been interpreted

to encompass the rights of a specific person or of specific persons. Thus, in petition 12.404 (Peru), the Commission considered the case of a Public Ombudsman who intervened in defense of a group of potential women voters allegedly as an *actio popularis* lodged on behalf of the common good. The petition was held admissible by the Commission even so, only as it related to such individual victims as were duly identified and defined according to inter-American system precedents.[FN5]

[FN5] See *supra*, Footnote 3, para. 35.

30. In its Report No. 48/96 considering a previously cited Peruvian case, the Commission held that:

The liberal standing requirement of the inter-American system should not be interpreted, however, to mean that a case can be presented before the Commission in abstracto. An individual cannot institute an *actio popularis* and present a complaint against a law without establishing some active legitimation justifying his standing before the Commission. The applicant must claim to be a victim of a violation of the Convention, or must appear before the Commission as a representative of a putative victim of a violation of the Convention by a state party. [FN6] (Translator's note: Free Translation)

[FN6] See *supra*, Footnote 4, para. 28.

31. The Commission took a like position in its report on the Maria Eugenia Morales de Sierra case of Guatemala, where it specified that:

(...)in order to initiate the procedures established in Articles 48 and 50 of the American Convention, the Commission requires a petition denouncing a concrete violation with respect to a specific individual..[FN7] (Translator's Note: Free Translation)

[FN7] See IACHR, Case 11.625, Report No. 28/98 (Guatemala), IACHR 1997 Annual Report, paras. 30-32. See Inter-American Court of Human Rights, Consultative Opinion OC-14/94, "International Responsibility for the Adoption and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention)," December 9, 1994, paras. 45-49.

32. That petitions filed as actions for the common good are deemed inadmissible does not imply that the petitioner must always be able to identify with particularity each and every victim on whose behalf the petition is brought. Indeed, it should be noted that the Commission has considered admissible certain petitions submitted on behalf of groups of victims when the group itself was specifically defined, and when the respective rights of identifiable individual members

were directly impaired by the situation giving rise to a stated complaint. Such is the case of members of a specific community. [FN8]

[FN8] See e.g. IACHR, Case 12.250, Report No. 34/01, The Mapiripan Massacre (Colombia), IACHR 2000 Annual Report, para. 27. See also IACHR, Case 12.053, Report No. 78/00, Mayan Indigenous Communities and Their Members (Belize), IACHR Annual Report, 2000, paras. 45-46.

33. Finally, with respect to the victim, it must be understood that the concept refers to individuals, the Commission having no standing to consider petitions regarding legal entities.[FN9]

[FN9] See IACHR, Case 10.169, Report No. 10/91, IACHR 1990-1991 Annual Report, in light of footnote 2. See also Pinto, *op cit.*, pg. 37.

34. It is clear from an analysis of the case reported here that Rodrigo Noriega filed a petition on behalf of the citizens of Panama alleging that the right to property of all Panamanians has been violated.[FN10] He points out that those principally affected include environmental, civic and scientific groups such as the Residents of Panama, Friends of the Metropolitan Nature Reserve, the Audubon Society of Panama, United Civic Associations, and the Association for the Research and Protection of Panamanian Species[FN11]. The Commission, on that basis, holds the present complaint to be inadmissible since it concerns abstract victims represented in an *actio popularis* rather than specifically identified and defined individuals. The Commission does recognize that given the nature of the complaint, the petition could hardly pinpoint a group of victims with particularity since all the citizens of Panama are described as property owners of the Metropolitan Nature Reserve. The petition is inadmissible, further, because the environmental, civic, and scientific groups considered most harmed by the alleged violations are legal entities and not natural persons, as the Convention stipulates. The Commission therefore rules that it has not the requisite competence *ratione personae* to adjudicate the present matter in accordance with jurisprudence establishing the standard of interpretation for Article 44 of the Convention as applied in the aforementioned cases.

[FN10] Petition, pg. 1.

[FN11] Petition, pg. 13.

35. Having determined that it lacks standing *ratione personae* to consider the present case, the Commission need not reach the petition's remaining elements of admissibility.

V. CONCLUSION

36. The Commission holds that the petition fails to meet the requirement set forth in Article 44 of the American Convention in light of jurisprudence regarding interpretation standards established by the Commission's adjudication of previous similar cases. The Commission consequently concludes that the petition is inadmissible under Article 47 of the American Convention.

Based on the foregoing arguments of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To hold the present petition inadmissible for failure to meet the Commission's required competence *ratione personae* under Article 47 of the American Convention.
2. To forward to the Government of Panama and to the petitioner this report holding the petition to be inadmissible.
3. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.