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International Human Rights Clinic
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Introduction

1. In May of 2014, The International Human Rights Clinic of The University of Oklahoma College of Law traveled to Panama for research purposes. The IHRC-OU was stationed primarily in Panama City, but also traveled to Santiago, Panama.
2. Panama is a country about the size of Ireland, or of the state of Maine in the United States. Panama has been independent for more than a century, and has had control of its main trade feature, the Panama Canal, for a decade and a half.
3. The country is rich in natural resources. Panama is abundant in rainforests and timber. Panama also has sub-surface minerals, which they are recently developing new ways to exploit. The Panamanian government owns the rights to all sub-surface minerals in the state, including those on the native communities called *comarcas*.
4. IHRC-OU visited with the Congress of Indigenous Peoples, COONAPIP, the national coordinating body for indigenous peoples, the Organización de Jóvenes Emberá y Wounaan de Panamá (Organization of young Embera and Wounaan of Panama), with a group of Embera villagers in *Cerro Blanco*, a barrio in the Ngäbe-Buglé *comarca*, and with representatives from the Panamanian Foreign Minister's office.
5. The purpose of meeting with the Ministry of Foreign Affairs in Panama was to gain an overview of the Panamanian government structure, and learn of its historical framework. After hearing a presentation of the Panamanian government, IHRC-OU was given a tour of the Palacio de Presidencial de Panama. The meeting also gave IHRC-OU the opportunity to ask questions on the Panamanian legal system, and the international education system. During the meeting, IHRC-OU was able to begin negotiations for a foreign exchange program between Panama and an University of Oklahoma student.

6. IHRC-OU was also able to meet with OJEWP in Panama City, Panama. OJEWP gave IHRC-OU an overview of the indigenous populations' history and current stance in Panamanian society. From this meeting, IHRC-OU was able to learn of the current grievances of Panama's indigenous groups as well as the success of the previously implemented International Provisions and Domestic Undertakings. The meeting with OJEWP also allowed the members of OJEWP to ask IHRC-OU about the American Legal System, including The United States' view towards Native Americans and their rights as sovereigns.
7. Finally, IHRC-OU traveled to a *comarca* just outside of Santiago, Panama. This travel afforded OU Law members the opportunity to meet with an indigenous community which shared with the OU Law students its rich history and the high value it place on its land and natural resources. Members of the community also expressed their great concern with the rights to their land as they fight against a major company who seeks to convert the indigenous community's land for commercial purposes.
8. IHRC-OU was able to interview several members of the community including the Chief and nine year old, Eti, who allowed IHRC-OU to record a video of her giving a speech against the intrusion of the company on the community's land. Every member of the indigenous community encouraged IHRC-OU to share the video to spread the word about the community's grievances. The video is in the custody of IHRC-OU and can be shared with the UN upon request.

I. Economics and Indigenous Panamanians

Best Practices

9. Certain factions of the Panamanian government have recently paid more heed to the needs and wishes of the indigenous population. Most notably, the new government's election has

given the native peoples reason to be optimistic that their desires will be heard and that they will have more of a voice in the economy.

10. Of the two main branches of economic growth in Panama, trade centered around the canal and development of natural resources, indigenous participation is low.
11. At twelve percent of the population, the indigenous Panamanians are a large part of the country's demographic landscape, and could have claims to a large part of the country's physical landscape. As a political minority in a country with coalition governments, the indigenous voice could be a powerful one, in elections and in the economy. This has not always been the case, however.
12. Recently the indigenous peoples of Panama have become more politically organized and are concentrating on diversifying their economic activities, which is a positive step. Local organizations have created support systems for indigenous peoples wishing to participate in the local and international market economy. Indigenous peoples are also evaluating their complicated relationship with the land and natural resources in order to determine what position they want and what position they have, as far as participating in the market economy. Thus far indigenous groups have focused on gaining land rights as a way to ensure the continuation and preservation of their culture, language, and social identity. This may bring more difficulties in the future, if they ever wish to use the land for non-traditional endeavors – in other words, if they are to have access to the mineral resources of the lands.
13. Additionally, Panama continues to be a leader in indigenous land rights in Central America. The acknowledgment of quasi-political areas for indigenous use, the *comarcas*, is a step not taken by many countries.

14. In the cities, indigenous people are growing with the larger Panamanian economy. Many indigenous people own businesses and work in the private sector. In urban areas, indigenous participation in the economy is on the rise, which is a positive and important step.

Challenges and Obstacles

15. Despite the efforts made by the Government to promote economic and social rights, many challenges remain, particularly with regard to employment, education, health and housing.

16. Indigenous participation in the economy, though growing and encouraged by grassroots movements, is still low. Of the poorest segment of Panama's population, the majority of people are of indigenous or African descent. As the Republic of Panama enjoys a booming economy and continues its favored position as important international trade route, it is important that indigenous people participate in that growth.

17. Another challenge is the tenuous and undefined position of the *comarcas*. Although the Republic of Panama has taken positive steps in identifying lands for indigenous use, the designation of the lands remains mostly political. There is no sovereign or even quasi-sovereign status attaches to the *comarca* designation. This is a dangerous precedent. Land designated for a certain group without any rights attached to it can become little more than a corral, a place for that group to be settled, without protection and without a say in their fate.

15. The paucity of defined rights in *comarcas* is also an obstacle to indigenous economic growth. The lands of Panama are rich in natural resources. It would unquestionably improve indigenous economic position to control at least some part of the development of the natural resources on the lands on which they dwell. Additionally, since those who dwell on the land are in a unique position to judge what best can and should be done with the natural resources, the indigenous populations of *comarcas* would be in an excellent position to make economic

decisions. The Republic of Panama has a good record of recognizing land sectors to be set aside for indigenous use, called *comarcas*. The *comarca* designation is still at best a political designation; consider attaching more power and control over the land and resources to the people who live on the *comarcas*.

18. For the same reason, the people dwelling on *comarca* lands are in a unique position as far as the judgment of environmental causes. It is well known that deforestation, strip mining, and other unhealthy environmental practices are prevalent in Panama, as in other nations. As the people closest to the environment in the *comarcas* set aside for their use, if the indigenous peoples had more control over their environment they might also make different decisions as to environmental stewardship and preservation. In IHRC-OU's interviews with representatives from the indigenous congress, the representatives expressed sincere concern about the state of the environment, nationally as well as internationally. They stressed that the environment is an integral part of their culture and lifestyle, and that the preservation of the earth is essential for the wellbeing of all humanity. A lack of control over their lands and environments was distressing in the extreme to these groups. The lack of land control overall is an obstacle to the economic and environmental hopes and goals of indigenous groups.

National Priorities, Initiatives and Commitments

19. The government assures us that, as they put together a program to promote Panamanian culture domestically and internationally, the culture of the indigenous peoples will be taken into consideration.
20. In IHRC-OU's interview with members of the foreign minister's office, the presentation was about the promotion of Panamanian culture domestically and internationally. Indigenous culture and issues seemed to have only a peripheral place in that plan. Indigenous culture

was to be taken into consideration after the formation of the plan for promotion. Since at least one in ten Panamanians is indigenous, it is surprising that their culture and concerns should be so peripheral. There is, however, a new government, and it is neither practical nor fair to make predictions about the policies and practices of the new government by the actions of the old.

21. As far as non-governmental actions go, IHRC-OU interviewed representatives from a group promoting the entrepreneurial and educational efforts of young indigenous peoples. The organization appeared to be exceptionally dedicated, and seemed to have much success. They had promoted the opportunities of indigenous people going abroad, and of their educational opportunities domestically. One of the important issues for that group is promotion of schools within local communities that teach the local language as well as Spanish. They also focus on promoting traditional indigenous culture and dress. Another goal is to promote indigenous business endeavors, an important goal for the economy of indigenous communities and for the national economy.

Expectations in Terms of Capacity-Building and Technical Assistance

22. Given the very recent and still ongoing transition of governments in Panama, it is difficult to form expectations about what this government might or might not be able to do to address the human rights issues.
23. In its interviews with various indigenous people and leaders, IHRC-OU understood the expectations of the indigenous communities to be cautiously optimistic with regards to the new government. As a significant portion of the population, and with the growing organization of their group, the indigenous people hope to enjoy a more powerful position within the political framework of the Republic of Panama. They seemed pleased with the

outcome of the election and spoke positively of the recent candidates' efforts to speak with and understand indigenous issues.

II. Land Rights

Best Practices

24. This section of the report concerns indigenous populations in the Embera and Woounan Communities in Panama; specifically, this section focuses on Land Rights in Panama. This report first provides an overview of the land right structure in Panama, secondly examines the current International Provisions and Domestic Undertakings in response to land right issues, highlights the plight of the Comarca Embera Woonaan citizens and their issues, and finally offers recommendations based upon IHRC-OU's findings.
25. The Indigenous people of Panama make up about 10% of Panama's indigenous population. At an estimated 22, 500 and 6,900 people the Embera and Woonaan groups make up about 1% of Panama's total population alone. Despite the recent International Provisions and Domestic Undertakings, issues with Land Rights in Panama are still very pressing.
26. Land Rights in Panama are particularly difficult for indigenous groups in Panama given the unique allocation of power between the government and natives. A conflict exists within the Panamanian Constitution, which gives the Panamanian government ownership of all of the land, yet recognizes that individuals still have their own property.
27. Upon IHRC-OU's visit to Panama, the following Best Practices have been observed. Albeit slow, the Panamanian government is showing an increasing interest in its native/indigenous population. The most telltale sign of indigenous improvement is in the realm of politics. OJEW P tells IHRC-OU that for the first time, politicians have sought out the indigenous vote and have made promises to advocate for the indigenous populations' needs.

28. In addition to politics, Best Practices in regards to land rights have also been seen in the area of public housing. IHRC-OU observed the process of several historic buildings being restored and renovated for improved living standards. The quality of living for Panamanians is also improving with an increase in the availability of free public transportation. This in turn, will lead to a decrease in carbon emissions and an overall healthy environment for citizens.

Challenges and Obstacles

29. Despite the improvements made, the Panamanian government could still benefit from implementing new provisions. The most pressing concern in regards to land rights and indigenous groups is to create greater transparency between groups and commercial companies. IHRC-OU recommends implementing a law that requires negotiations between companies and indigenous groups and a fair agreement between the two parties, prior to any use of indigenous land.

National Priorities, Initiative, and Commitments

30. The Panamanian Government has yet to introduce any program that directly relates to indigenous land rights. However, the Panamanian government has implemented several provisions that focus on improving the standard of living and provide better housing for Panamanian citizens.

Expectations in Terms of Capacity-Building and Technical Assistance

31. IHRC-OU has made contact with and continues relationships with the Ministry of Foreign Affairs in Panama, and OJEP and will use this relationship to be of assistance to the Panamanian government wherever possible.

III. Hydroelectric Power

Best Practices

32. Panama is working on recognizing the land rights of indigenous peoples. Indigenous peoples represent approximately 10% of the population; the country's five indigenous regions represent around 20% of the national territory.¹ Though not all indigenous groups and peoples are currently recognized, Panama is working on it.

Challenges and Obstacles

33. Panama has not yet acceded to the International Labor Standard's Convention No. 169, Indigenous and Tribal Peoples Convention.² This Convention deals specifically with the rights and protections of indigenous and tribal peoples.³ Among other things, it addresses identification of indigenous peoples, non-discrimination, recognition of indigenous cultures, and the right of indigenous peoples to decide priorities for their development.⁴

34. Indigenous and other human rights are at odds with the country's ability to meet its energy needs. In May 2013, El Salvador, Nicaragua, and Honduras sold 80 megawatts of power an hour, 24 hours a day, to Panama at an undisclosed price through the Electrical Interconnection System for Central American Countries (SIEPAC), an interconnecting grid between six Central American countries.⁵

National Priorities, Initiates, and Commitments

¹ INTERNATIONAL LABOR STANDARDS, Panama, <http://www.ilo.org/indigenous/Activitiesbyregion/LatinAmerica/Panama/lang--en/index.htm> (last visited June 23, 2014).

² INTERNATIONAL LABOR STANDARDS, *C169—Indigenous and Tribal Peoples' Convention* (1989), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169 (last visited June 23, 2014).

³ *Id.*

⁴ INTERNATIONAL LABOR STANDARDS, *Convention No. 169*, <http://www.ilo.int/indigenous/Conventions/no169/lang--en/index.htm> (last visited June 23, 2014).

⁵ Emily Tarbuck, *Panama: Regional Support Provides Relief from Energy Crisis*, ARGENTINA INDEPENDENT, May 17, 2013, available at <http://www.argentinaindependent.com/currentaffairs/newsfromlatinamerica/nama-regional-support-provides-relief-from-energy-crisis/> (last visited June 23, 2014).

35. In 2007, Panama was one of 144 countries to vote to pass the United Nations' Declaration on the Rights of Indigenous Peoples. This declaration attempts to set out the individual and collective rights of indigenous peoples and help protect their cultures, identities, and heritages.⁶

Expectations in Terms of Capacity-Building and Technical Assistance

36. As previously noted, Panama has partnered with other Central American countries through energy projects such as the Electrical Interconnection System for Central American Countries (SIEPAC). Through the pooling of resources, this could help Panama, as well as other participating countries, to pool their resources and better serve the needs of all their peoples, including those in indigenous communities.

IV. Education and Children's Rights

Best Practices

37. The government of Panama has made access to education a priority in recent years. Panama is very close to achieving the Millennium Goal with regards to access to education. Panama offers nine years of compulsory, free-of-charge basic education. Primary school education is now universal. At the primary level, the enrolment rate at this level is 98 per cent. In addition, Panama has taken steps to expand the coverage of middle and secondary education. At the secondary level (children 15 to 18) the enrollment rate is 60 per cent.

38. Panama is also working to improve the quality of education. Panama is currently implementing policies to reform educational curriculum. Panama is also working to expand coverage and improve school infrastructure. In addition to this, the Ministry of Education has

⁶ United Nations Permanent Forum on Indigenous Issues, <http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx> (last visited June 24, 2014).

implemented a project called “Back to the Classroom” which seeks to analyze the current education system, and compile data needed to target necessary educational reform.

39. Panama has also launched several programs to work with families to improve access to education. Panama is currently providing families with resources to help cover educational costs and expenses. Panama is also working to provide families with “study tools” and other educational resources. The government has recently launched a program that aims to provide school voucher for the purchase of uniforms. This program is currently serving 800,000 students.

Challenges and Obstacles

40. Despite the efforts made by the Government to promote access to education, reporters expressed concern that this process does not address the concerns of students in indigenous areas. Among the principal concerns are: (1) the disparity in quality between indigenous and nonindigenous schools - including the disparity in student completion levels, the disparity in teacher to student ratio, and the disparity in actual time spent in class; (2) the level of access to education faculties for indigenous children; and (3) incorporation of indigenous religious, language, history, art and philosophy into the curriculum.
41. With respect to the disparity in quality between indigenous and nonindigenous schools, the level of literacy is highest in indigenous areas. In addition, the student competition level is lowest in indigenous areas. This is likely linked to the fact that many school in rural indigenous areas operate on an “all grades model.” In these schools, every student is in one classroom with one teacher for all levels, grades, and ages of student. In comparison, the majority of schools in non-indigenous areas separate students by grade level, age, or year. As a result, indigenous schools typically have a much higher student to teacher ratio, which

decreases the amount of individualized student attention. Reporters noted that indigenous leaders were concerned that having every student in one room was both distracting to the individual students and reduced the instructional value students were receiving. These leaders were concerned that due to this difference the indigenous children would be at a disadvantage to their non-indigenous peers.

42. Furthermore, the disparity in completion level is also likely linked to the difference in time spent in the classroom. Reporters noted that, in many cases, class time in the indigenous communities is being held for just one or two hours sporadically during the week. Contrastingly, in nonindigenous areas, many children received all day education through out the week. Indigenous leaders expressed concern that indigenous children would fall behind their age group due to the sheer deficit in the amount of time spent in an educational facility. It was also suggested that this has made it difficult for indigenous areas to attract the most skilled teachers.

43. With respect to the level of access to education facilities for indigenous children, the level of coverage of educational facilities has improved. However, reporters noted that many indigenous people expressed concern that their children must walk a sizeable distance to get to their school. In some instances, children had to travel almost an hour or more to reach their school. Reporters noted that the path that some indigenous children had to take to access their educational facilities was, in some instances, extremely dangerous. Children were required to hike alone through deeply forested areas to reach their schools, sometimes fording perilously fast moving rivers with out bridges to get to their school. Contrastingly, their urban peers had access to public transportation and paved roads to get their schools. Reporters noted that indigenous leaders expressed concern about the dangerous conditions that indigenous

children faced to reach their schools and that this was often times a distraction from educational goals.

44. Finally, reporters noted that there was a lack of incorporation of indigenous religious, language, history, art and philosophy into the curriculum. In the December 2011 report, the Committee on the Rights of the Child among its recommendations included: sufficient allocation of human, technical and financial resources for intercultural and bilingual education programs in all indigenous territories as well as in other areas with indigenous populations. The committee further recommended that indigenous children receive health services and education adapted to their culture, history and languages. The committee also recommended undertaking efforts to eliminate prejudice against indigenous children in the education systems through legislative measures, awareness and in-service training for public officials, including the police and security officers.
45. Reporters noted that often teachers in indigenous areas were non-indigenous and did not speak their students' native languages. As a result, many indigenous students often struggle in the classroom. The RDH noted that intercultural bilingual education has not been universally introduced in indigenous territories. As a result of this, reporters noted that many indigenous leaders expressed concerns with respect to the curriculum respecting and expressing the indigenous cultural and political paradigm. As a result, students are forced to reconcile what they have learned in the classroom and what they have learned at home on their own. Further, indigenous leaders expressed concerns that because indigenous perspectives are not incorporated into curriculum, nonindigenous children might never be exposed to the indigenous historical and cultural perspectives. This will result in less of a

cohesive national understanding of the cultural experiences and perspectives in Panama as these children grow up, and go on to be economic and political leaders.

National Priorities, Initiatives and Commitments

46. Panama has ratified the Convention on the Rights of the Child; which requires that primary education shall be free and compulsory. In addition to this Panama has also adopted the UNESCO Convention against Discrimination in Education. Further, Panama has adopted the International Covenant on Economic, Social and Cultural Rights, which requires states to make primary education freely available and compulsory. Panama has also adopted the International Convention on the Elimination of All Forms of Racial Discrimination, which requires states to guarantee access to education free from distinction or discrimination of race, color, ethnic origin, or national origin. The government has introduced National Plan for Inclusive Education and the Education Support Service to promote the acceptance and inclusion of students in educational centers.

Expectations in Terms of Capacity-Building and Technical Assistance

47. Currently, the Government is under a leadership transition. Reporters noted that indigenous leaders were hopeful that the current Panamanian government would do more to improve the quality of education for indigenous children. Reporters noted that the current government had met with the indigenous leaders during the election. During the observations that went into this report, the Government expressed a willingness to help raise awareness of the indigenous perspective within the framework of the greater Panamanian cultural identity. The indigenous leaders expressed a positive vision of the future for indigenous children in Panama, looking forward to for greater levels of cultural inclusion, higher levels of educational completion, and an enriched educational experience for all indigenous children.

V. Women's Rights

Best Practices

48. The Panamanian government has taken strides in recent years in promoting women's rights within the nation. The Ministry of Social Development (MIDES) and the recently established National Institute of Women have partnered together to promote equality of women in the workplace, as well as equal pay for equal work. There is still a 14% wage gap between women in men in the work force that continues to be an area of focus among the government.
49. Panama adopted Law No. 4 in January 1999, which established equal opportunities for women. It provides for the prohibition of discrimination on the grounds of sex and gender and calls for equality under the law. Furthermore, it condemns any kind of violence against women. This law gave a proper definition to gender discrimination under Panamanian law.
50. In October 2013 Panamanian president Ricardo Martinelli signed into law Bill 649. The bill criminalizes domestic abuse and family violence, while also imposing stiffer penalties on femicide. Femicide has long been a problem in Panama. The problem has reached new heights in recent years, from 2008 until 2013 there were over 300 documented cases of femicide in the country.⁷ Bill 649 imposes a penalty of 30 years in prison for femicide.

Challenges and Obstacles

51. Despite the foundation of the National Women's Institute, many women's groups within the country feel that the Institute lacks any real authority. The Institute is not in any position to weald authority; it must rely on other higher Ministries as partners if it wishes to advance goals. While the Panamanian government has increased funding for the Institute, the 2010

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UPR Report noted that unless the structuring of the Institute changes within the government, no real effects will be seen.

52. During the last UPR cycle the Working Group recommended that Panama take action in order to increase social and political participation of its women citizens. In 2012, the National Assembly passed an amendment to the electoral code stating that women must encompass at least 50% of the candidacies for primaries and internal party elections.⁸ However, if less than 50% of female candidates run for office, the legislation allows me to fill the vacant spaces.⁹ This amendment tends to have little effect on providing a threshold for women candidates in national or local elections though because it sets no limits for women candidate participation. Since 2009 the percentage of women that make up Panama's unicameral legislature has remained the same at 9%, down from 17% from the 2004-2008 period.¹⁰ During the 2010 election period, women were only able to obtain six seats in the 71-seat legislature.¹¹ There is only one female judge on the Panamanian Supreme Court, and only six women in the seventeen-member cabinet.¹²

53. Among the indigenous communities women are at even more of a loss. The Panamanian government has yet to implement adequate budgetary provisions that would allow for the implementation of programs and/or projects in indigenous areas to help foster economic advancement of women. There has been a real lack in any sustainable economic development

⁸ See National Assembly, Amending Articles of the Electoral Code August 12, 2012 (translated into English), available at http://www.asamblea.gob.pa/apps/seg_legis/PDF_SEG/PDF_SEG_2010/PDF_SEG_2012/PROYECTO/2012_P_508.pdf.

⁹ Id.

¹⁰ The World Bank Data Collection, available at <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?page=1>.

¹¹ Id.

¹² Id.

plans in indigenous areas that would create financing options that would encourage indigenous women to start small or even medium size enterprises.

54. Violence against women continues to be a struggle in Panama. Panamanian culture has long been characterized as male dominated. As mentioned above, the government has taken steps to cut down on the rapidly rising number of crimes against females. The Committee on the Elimination of All forms of Discrimination Against Women expressed certain concerns in 2010 that upon divorce equal sharing of marital property only extends to tangible property and not to any intangible property including savings accounts.¹³ The government has not taken any steps to correct this portion of the Family Code at this time.

National Priorities, Initiatives and Commitments

55. Panama ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981, and the Optional Protocol in 2001. By becoming a state party to the Optional Protocol, the Panamanian government agreed to submit to periodic reviews by the CEDAW Committee on the countries implementation of the Convention. Panama submitted timely reports for review in 2009, detailing how the government had been enforcing the Convention, but has since failed to address the Concluding Observations of the Committee and follow up letters from the Rapporteur calling for progress reports.

56. The National Institute of Women and MIDES have worked to provide adequate services and protection for victims of domestic violence.

57. Expectations in Terms of Capacity-Building and Technical Assistance

58. As it has already been noted, Panama is currently going through a change in leadership at its highest levels. During the previous governments time in office, the advancement of women's

¹³ Committee on the Elimination of All Forms of Discrimination Against Women Concluding Observations, January 18-February 5, 2010, CEDAW/C/PAN/CO/7, p. 10.

rights saw a gradual increase in importance, culminating in the signing of important legislation to help protect women from gender violence. Civil society appears from all sides to be enthusiastic about the new administration and the continued effort to advance women's rights. The indigenous communities are still under represented when it comes to women's rights. In conducting interviews with the new government, there does not seem to be a real push to individually advance the rights of indigenous women, or provide for more access to employment or financing or micro lending. The push appears to be to advance the indigenous people as a collective group. Among the indigenous groups that were interview, there still appears to be hope that the plight of their women will be eased.