



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Panama to the 22nd Session of the Universal Periodic Review, Human Rights Council, April – May 2015

Prepared by

Students

Erin C. Smith, J.D. Candidate, 2015

Lindsay Lucas, J.D. Candidate, 2015

Chinyere Kimberly Ikegubunam, J.D. Candidate 2015

Erin M. Erhardt, J.D. Candidate, 2015

Amanda Lee, J. D. Candidate, 2015

Professors

Lindsay Robertson

Alvaro Baca

September 11, 2014

EXECUTIVE SUMMARY

The University of Oklahoma College of Law International Human Rights Clinic, U.S.A. (“IHRC-OU”) submits this Report on the Republic of Panama to the 22nd Session of the UPR, Human Rights Council. This report and attached annex concerns indigenous populations in Panama. Specifically, the report considers (1) economics, (2) land rights, (3) hydroelectric power, (4) education and children’s rights, and (5) women’s rights. The purpose of this report is to provide a balanced view of indigenous concerns in Panama and recommend measures to address these concerns. The IHRC-OU notes the commitment expressed by Panama to recognizing the rights of indigenous peoples. Thanks to the Organización de Jóvenes Emberá y Wounaan de Panamá, the Comarca Ngäbe-Buglé, and the Panamanian government (Ministry of Foreign Affairs—Department of Cultural Diplomacy) for their support and cooperation.

I. Economics and the Indigenous Panamanians.

International Provisions. In the UPR Working Group 2011 report, Panama examined and supported the recommendation to consider ratifying, signing or adhering to, as appropriate, the OP - ICESCR.

Domestic Undertakings. In 2010, the CERD Committee recommended that Panama finalize its procedures still pending to ensure that all Panamanian indigenous communities secured a region or entity of similar status. In the UPR Working Group 2011 report, Panama examined and supported the recommendation. Redouble efforts to enhance the positive results in the area of economic, social and cultural rights to provide more benefits to the most vulnerable populations, in particular children, indigenous peoples, people of African descent and the rural population. In the UPR Working Group 2011 report, Panama considered that the following recommendation have already been implemented or in the process of implementation: Draw up an effective and appropriate policy framework and institutional mechanism to fight hunger, food insecurity and inequality in income distribution.

Human Rights on the Ground. According to our observations, the indigenous participation in the political-economic landscape of Panama has improved in the last few years. The improvements have been good with the current grassroots effort, and could be even better if the Panamanian government showed support of the efforts of the indigenous peoples. There is still a long road ahead for indigenous economic prosperity, even with recent positive developments. There are still estimates of as many as 90% of indigenous Panamanians living in extreme poverty. Many are manual laborers at risk of serious exploitation. Often women cannot find jobs even in the least desirable fields of farm labor and domestic servitude. Natural barriers to labor force participation such as the often-rural location of indigenous communities combine with social factors including prejudice against indigenous people, limited access to education, and language barriers to make significant workplace advancement unlikely for most indigenous workers.

Recommendations

- Consider amending the status of the *comarcas* to include more sovereign interests of the native tribes who live on the land.
- With respect to its constitutional framework and the full exercise of its sovereignty, integrate native land and resource rights into the governmental framework to allow native peoples access to the rich resources and a chance at a better economy.

- With due respect to the perspective of the Panamanian government, and recognizing that labor unions do not solve all or even many labor problems, foster and develop organizations for the advancement of manual laborers.

II. Land Rights

International Provisions. In the UPR Working Group 2011 report, Panama examined and supported the recommendation to take operational steps to implement the UNDRIP, including the recognition of the right to land and natural resources of all indigenous peoples in Panama. As of yet, the only visible progress towards this recommendation has been seen through and increases in promises to make resolutions in the next political campaign. The UPR working group also recommended that the Panamanian government consider ratifying Convention No. 169. Panama has pledged to ratify.

Domestic Undertakings. In the May 2014 Report, the Special Rapporteur on the Rights of Indigenous Peoples made the recommendations followings: Advance in processing pending applications of the communities Bri Bri, Embera and Wounaan according to Act 72 of 2008 and assist remedy whatever defects in their applications, which could result in delays in this process. It is difficult to determine whether this Domestic Undertaking has properly implemented. The May 2014 report also recommended that the Panamanian government take necessary measures, in coordination with the respective indigenous authorities, to prevent other from entering recognized indigenous territories, and punish those found in these lands illegally. This Domestic Undertaking has yet to be fully carried out. Currently, many indigenous groups in Panama struggle to prevent international companies from improperly using their lands.

Human Rights on the Ground Case Study: Comarca Embera and Wounaan Issues. On May 14, 2014, IHRC-OU traveled to the Comarca Embera Wounaan, just outside of Panama, City. Our meetings with the communities added an additional Land Right complexity, of which the HR should be aware. The Embera Wounaan, created by Law No. 22 of November 8, 1983, is spread across 40 communities. They consider this land to be sacred grounds. One key examples of this belief is a sacred stream of water, from which the natives have gone for generations to be healed of all infirmities. To the tribe, the value of this water cannot be monetized. Recently, an International Company has sought to take over the land of the natives of the Comarca. The natives lamented that the Company has not sought to negotiate with the communities, but has just began to bomb the citizens in hopes of killing them off to take the land. Several citizens recounted horror stories of having grenades thrown at them and even losing family members. Aside from the various human rights claims that may be involved, the issue with the Comarca tribe also highlights issues within the Panamanian constitution with regards to land rights. Essentially, the only thing a company would need to do in order to obtain access to indigenous land would be obtain a contract from the government. This is extremely troublesome for indigenous groups who have no access to their land as is.

Recommendations

- Give more attention to land rights as a whole.
- Take action to increase the transparency between major companies and indigenous people. The government may benefit from looking to other tribal relations with major companies and government, such as those of the U'wa tribe of Colombia, who know has the authority to be consulted prior to any oil and gas operations in their land.
- Make specific provisions to address land rights in native communities.

- Work towards improving the overall standard of living for indigenous landowners.
- Clearly define indigenous land rights.

III. Hydroelectric Power

International Provisions. In the 2011 UPR Working Group Report, Panama examined and supported the recommendation that the country conduct prior consultations with indigenous communities, as required by international standards, in relation to all projects that might affect them—in particular, large-scale projects such as hydroelectric dams and mining activities and national plans to reduce emissions from deforestation and forest degradation. The State, in its Report, stated that it had adopted legislation recognizing the right to conduct consultations and was trying to build a positive environment in which to promote dialogue with indigenous communities regarding these issues. Nonetheless, the IHRC-OU expresses its concern that prior consultation is not being appropriately implemented near the Barro Blanco project.

Domestic Undertakings. In the 2011 UPR Working Group Report, Panama examined and supported the recommendation that the country reinstate the requirement to produce environmental impact studies, which take into account the possible impact on the rights of persons living in affected areas for all major projects, especially in indigenous and protected areas, and that these studies are made public. However, the IHRC-OU expresses its concern that Panama has not appropriately implemented this recommendation in the areas near the Barro Blanco project.

Human Rights on the Ground: While Panama purports to accede to the above propositions the indigenous communities disagree. Genisa (Generadora del Istmo S.A., a Panamanian company established in 2006 which is currently constructing the Barro Blanco hydroelectric dam on the Tabasara River in the Chiriqui Province of Panama) claims that its project meets international safety and environmental standards and that no one will need to be relocated. Genisa further claims that it is consulting with indigenous communities, as international standards require, and has agreed on terms under which the Ngobe-Bugle land will be rented during construction. However, the Ngobe-Bugle, who live close enough to the construction that they can see cranes, claim that they have not been adequately consulted and that the new dam poses a serious threat to their way of life: not only might the dam force them to move from areas in which they have lived for generations, but community members consider the Tabasara their lifeblood and the source of their cultural heritage. With regard to the environmental impact of this project, Genisa submitted an environmental impact assessment for the project in January, 2008, and it was approved later in 2008. This report has been made public. Genisa and the government appear very aware of the environmental standards and requirements, and seem prepared to address any issues. However, the document may be inconsistent and flawed. Overall, the environmental issues seem to be of less import than the effect on the indigenous peoples. While hydroelectric power certainly has a lasting impact on the environment, it is a significant renewable energy source. Because Panama does not produce crude oil, natural gas, or coal, Panama must find other ways to generate electricity. As of 2011, hydroelectric power accounted for 53% of Panama's electricity generation. To meet domestic energy needs, Panama collaborates with nearby countries Colombia and Guatemala to share transmission lines.

Recommendations:

- Continue to strive for peaceful, rather than violent, negotiations with indigenous communities.

- Create forums where indigenous community members, the government, and organizations like Genisa can address potential issues in a mediated environment.
- Consider outside environmental assessments of projects to help mitigate damages to both sides and provide a more comprehensive report.
- Enforce recognized indigenous land rights and continue to work toward complete indigenous land right recognition.
- Continue collaborating with other Central and South American countries to share energy sources and offset energy production costs.

IV. Education and Children's Rights

Domestic Undertakings. In the UPR Working Group 2011 report, Panama examined and supported the recommendation of giving full implementation to standards in force concerning the education of indigenous peoples, through study plans taking into account their language, history, art and philosophy. The CRC Committee, in its consideration of reports submitted by State parties under Article 44 of the Convention in December 2011, welcomes the State party's efforts in reaching universal enrolment in primary education, increasing support for informal pre-school education in indigenous areas, and revising and modernizing the national curriculum. Nonetheless, the IHRC-OU regrets that Panama has not implemented any of these recommendations in the indigenous communities near the area of the project Barro Blanco.

International Obligations. The CRC Committee in December 2011 recommended the allocation of sufficient human, technical and financial resources for the rollout of the intercultural and bilingual education program in all indigenous territories and in other areas with indigenous populations. Nonetheless, the IHRC-OU regrets that Panama has not implemented this recommendation in the indigenous communities near the area of the project Barro Blanco.

Human Rights on the Ground. In recent years, the status of access to education has improved. School coverage has increased significantly. Panama is very close to achieving Millennium Development Goal regarding universal primary education access. The current challenge facing Panama is to reduce the school drop-out rate and to improve the quality of education. Panama offers nine years of compulsory, free-of-charge basic education. At the primary level, the enrolment rate at this level is 98 percent. However, at the secondary level (children 15 to 18) the enrollment rate is 60 percent. There are also high levels of drop out at the secondary level. Further, there is a disparity in the quality of education for indigenous and non-indigenous children. Many schools in the indigenous communities operate on an "all grades model" with one teacher for all levels and ages of student as opposed to the majority of schools in non-indigenous areas where students are separated by grade level, age, or year. This raises concerns that having every student in one room is both distracting to the individual students and demands that the teacher spend less time instructing each individual student. Further, there is a disparity in the amount of class time in schools in indigenous areas versus non-indigenous areas. In many cases, schools in indigenous areas hold class for just one or two hours each school day rather than the all day education that children receive in nonindigenous communities. This raises concerns that indigenous children might fall behind their non-indigenous peers due to the sheer deficit in the amount of time spent in an educational facility. It was suggested that this has contributed to the disparity in student completion level. It was also suggested that this has made it difficult for indigenous areas to attract the most skilled teachers. Further, indigenous children struggle with access to education. The majority

indigenous children live in rural areas. This requires indigenous children to invest significantly more time and resources to access their educational facilities than their non-indigenous peers. In addition to this, there is a high discrepancy between the educational experience for indigenous children in rural areas and non-indigenous children. The RDH notes that intercultural bilingual education has not been universally introduced in indigenous territories. It is important to note that the illiteracy rate is highest in indigenous areas. This may be because the majority of teachers in indigenous areas are non-indigenous and do not speak their students' native languages. This results in an education curriculum that does not reflect indigenous historical and cultural perspectives.

Recommendations

- Consult with indigenous people to implement bilingual and cultural education in indigenous areas to improve existing programs and curriculum.
- Work to standardize the amount of time that students receive in the class room.
- Standardize the student to teacher ratio for all students nationally by eliminating the one grade school model where feasible.
- Increase the number of indigenous teachers and work to educate non-indigenous teachers about indigenous culture.
- Standardize national curriculum so that all children are exposed to indigenous perspectives during their course work.

V. WOMENS RIGHTS

Domestic Undertakings: The UPR Working Group 2011 report commended Panama on establishing the National Women's Institute and recommended that Panama provide more support and funding to this office. To date Panama has provided more funding but has continued to keep the authority of the Organization at such a low level within the overall government structure that any substantial advancement cannot occur. The 2011 Report also recommended Panama take steps to guarantee more women's participation in the levels of government; Panama has made some genuine steps since 2011 to increase these numbers.

International Undertakings. The UPR Working Group 2011 report, Panama examined and supported the recommendation of the Convention No. 169. This Convention deals with indigenous and tribal peoples' rights and includes non-discrimination clauses. This Convention has the potential to strengthen the rights of indigenous women in Panama; nonetheless, the IHRC-OU regrets that Panama has not yet made progress in ratifying this Convention. In 2010 the CEDAW Committee issued concluding observations recommending that Panama follow-up within two years discussing the allocation of sufficient resources to implement all legal measures aimed at guaranteeing gender equality and non-discrimination. In this regard, the IHRC-OU regrets that Panama has not yet implemented this recommendation.

Human Rights on the Ground. As of 2012, Panama ranked 105 out of 129 countries globally and lowest in the region in women's representation at high decision-making levels of government. A bright spot for indigenous women is that an estimated one in six women serving in the national legislature was indigenous in 2012. Literacy remains a substantial problem for indigenous women; some Panamanian indigenous populations have rates falling to as low as fifty-seven percent for women. Panama has worked to increase the economic participation rate for indigenous women, but has only succeeded in raising participation to 19.3% while the rate for non-indigenous women is 44.4%.

Recommendations

- Consider developing programs that would help raise the literacy rate among indigenous peoples, specifically women.
- Effectively take steps to ratify Convention No. 169 of the International Labor Organization in order to provide better protection against discrimination faced by indigenous peoples, specifically indigenous women.
- Provide a better framework for indigenous women to access training programs for economic advancement.