



**University of Oklahoma College of Law
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The United States of America**

Shadow Report on the Republic of Panama for the Ninth Session of
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EXECUTIVE SUMMARY

In writing this Shadow Report, the International Human Rights Clinic of the University Of Oklahoma College Of Law had the opportunity to travel to Panama and meet with the public and private institutions that work with Panama's indigenous groups. We express our sincere gratitude to the NGO Ngobe Cultural Action, Comarca Kuna Yala, and Panama's government agencies for their support and cooperation in the information gathering for this report.

The International Human Rights Clinic of the University Of Oklahoma College Of Law submits the following shadow report to the Ninth Periodic Review of the United Nations Human Rights Council. Specifically, the report concerns the indigenous people in the Republic of Panama and surveys Panama's compliance with certain human rights obligations. The report focuses on the selected areas of (1) Education and Children's Rights, (2) Degradation of Environmental Quality, (3) Land Infringements, (4) Right to Health, and (5) Prison Conditions.

The International Human Rights Clinic of the University Of Oklahoma College Of Law notes the expressions of commitment made by the government of Panama to reconcile with indigenous people and increase compliance with its international obligations. Panama has increased access to education through state subsidies for the purchase of items required for school attendance. Panama's constitution provides a guarantee of the reservation of indigenous land and a clean environment. Additionally, Panama has enacted legislation that protects the rights of its indigenous people to natural resources on their land. The state has also enacted legislation implementing traditional medicine practices into primary healthcare. Likewise, Panama's constitution provides extensively for the protection of prisoners.

In the area of education and children's rights, despite improvements in domestic law, there is a disparity in access to education and healthcare between indigenous and non-indigenous people. These inequities are created because of a lack of access to educational institutions, healthcare institutions, high rates of poverty, and a lack of understanding of traditional practices and customs.

Infringement of indigenous rights to land and degradation of environmental quality have had grave consequences for the indigenous people in Panama. Often indigenous land is taken without consent or compensation, causing displacement and negative environmental consequences. For example, the Chan-75 hydroelectric dam has significantly harmed various aspects of the environment, including flooding and altered stream flows.

Although protected by the constitution, the indigenous people within Panama's prison system suffer inequality and hardship. This is due to a lack in communication and resources. Primarily, poverty causes disparity in the treatment of indigenous prisoners relative to others.

The purpose of this Shadow Report is to illuminate the fragility of the situation of Panama's indigenous people and to offer a number of recommendations with the hope that Panama's leaders will improve the circumstances of indigenous people in accordance with international norms and obligations.

I. EDUCATION AND CHILDREN'S RIGHTS

Normative and Institutional Frameworks

Domestic Undertakings: Panama provides free, compulsory primary education to all of its minor citizens, administered by the national Ministry of Education. Panama also provides subsidies to poor families that help defray the costs associated with education. Panama has worked, with mixed results, to provide indigenous children with education that is culturally appropriate, including bilingual education.

International Obligations: Article 13 of the ICESCR recognizes the right to education (section 1), and requires states parties to make primary education compulsory and freely available (section 2(a)). The CERD requires that states parties guarantee the right to education without distinction as to race, color, or national or ethnic origin (Article 5(d)(v)). Article 24(2) of the ICCPR requires states parties to register children at birth.

Human Rights on the Ground

Panama has high rates of poverty and extreme poverty, especially among its indigenous peoples. Indigenous children additionally face problems specific to indigenous peoples, such as discrimination and a lack of access to adequate cultural and linguistic education. While 95% of Panama's urban population has a primary-level education and 70% have a secondary-level education, 70% of indigenous peoples have a primary-level education and 20% have a secondary-level education. There are two main reasons for this: first, the indigenous peoples are concentrated in rural areas, and transportation to the schools can be costly and time-consuming, and second, not all indigenous children speak Spanish, but instead speak only the language of their tribe. The first problem is exacerbated by the fact that Panamanian children are required to wear shoes to school, and many of the indigenous children who live in rural poverty own no shoes. The second problem is exacerbated by school curricula reflecting no understanding of the relevance of indigenous cultural perspectives, and employment of non-indigenous teachers, who cannot speak the first languages of their students. Finally, Panama's indigenous children are not registered at birth at a rate commiserate with international standards. An improved system for registering indigenous children would allow Panama to better document these children's social, physical and educational status and progress.

Recommendations

- Panama should work to improve the number of indigenous children registered at birth.
- Panama should continue its system of subsidies to indigenous households, and consider ways to make the program more effective, such as directly providing the required school supplies to indigenous children.
- Panama should work to preserve bilingual and cultural education: (1) by improving existing programs; (2) by recruiting the indigenous people themselves to participate in creating appropriate curricula; and (3) by educating all children about the value of Panama's various indigenous cultures.
- Panama should train indigenous people as teachers, and educate non-indigenous teachers about indigenous culture and language.

II. DEGRADATION OF ENVIRONMENTAL QUALITY

Normative and Institutional Frameworks

International Provisions: Article 8 of the Convention on Biological Diversity obligates Panama to preserve and promote wider application of indigenous communities' traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Article 10 of the United Nations Framework on Climate Change and Kyoto Protocol obligates Panama to implement a program containing measures to mitigate and facilitate adequate adaptation to climate change, including programs concerning waste management. Articles 21 and 29 of the Declaration on the Rights of Indigenous Peoples state indigenous peoples have the right to the improvement of sanitation and health conditions, as well as conservation and protection of the environment.

Domestic Undertakings: Panama's constitution explicitly reserves land for the indigenous peoples of Panama in article 127, and guarantees to the population an environment free of contamination in article 118. Law 2 of January 7, 1992 creates the regulatory and institutional framework for Panama's water supply and sanitation sector. ANAM, Panama's environmental agency, implemented the National Strategy of the Environment: Environmental Management for Sustainable Development 2008-2012. This document recognizes an increase in solid waste due to boosts in the economy and population. Additionally, Panama has entered agreements with the Nature Conservancy Panama to advance environmental conservation.

Human Rights on the Ground

Bocas del Toro: The negative effects of development and tourism on environmental quality are concentrated in the indigenous communities of Panama, often with a lack of compensation. Disparate environmental burdens on indigenous communities arise from development projects and ineffective waste management. The Chan-75 hydroelectric dam threatens the indigenous people and environment of the Bocas del Toro Province. In addition to flooding indigenous communities and displacing them from their homes, the dam adversely affects aquatic and streamside habitats, blocks fish passage to spawning areas, impacts stream flow through the diversion of water, and lowers the amount of dissolved oxygen in the water. Deforestation is also a concern. While the Chan-75 hydroelectric dam yields some benefits to Panama, environmental and social burdens fall entirely on the indigenous communities.

San Blas: The waste management system in Panama is inefficient, and heightened tourism increases the burden on indigenous communities. Panama has no official recycling program. Panamanian tourism to the San Blas Islands within Comarca Kuna Yala has increased. As a result of heightened tourism there is excess refuse left behind on the islands. The Kuna Yala cannot manage the excess refuse, most of which is recyclable plastic bottles. Additionally, trash generated by tourists gets discarded in the ocean and washes onto the island shores.

Recommendations

- Share equitably the benefits of development in indigenous communities and provide restitution to indigenous communities for directly experiencing the negative impacts of development on environmental quality.
- Establish a firm regulatory framework for waste management with a focus on recycling, and invest more resources in waste management programs to boost the economy by maximizing beneficial use of waste and creating jobs.

III. LAND INFRINGEMENTS

Normative and institutional frameworks

Domestic Undertakings: Article 127 of the Panamanian constitution guarantees collective ownership of land to indigenous people sufficient to achieve their economic and social welfare. Furthermore, the Constitution requires that Panama abide by international law, an area of law that has extensive requirements relating to indigenous land issues. Law 41, Title VII of 1998 also protects indigenous rights to natural resources on their lands, and the right to compensation for any takings of those resources. To promote indigenous land ownership, Panama has acknowledged many indigenous communities independent territories.

International Obligations: The DRIP in Article 26 recognizes the right to lands and resources that they have traditionally owned or occupied by indigenous people. Furthermore, states are to give legal recognition and protection to these lands and resources. Article 8(b) requires redress for “any action which has the aim or effect of dispossessing them of their lands, territories or resources.” Article 10 requires informed consent to be removed from indigenous lands. Panama is also a party to the Indigenous and Tribal Population Convention of 1957. Article 12 of the Convention restricts the removal of indigenous people from their territories for any reason other than national security, national economic development, or for health reasons and requires the substitution of lands sufficient to provide for present and future needs when they are removed. Article 5(d)(v) of the ICERD requires the elimination of discrimination in relation to the right to own property alone, as well as in association with others. Finally, two Inter-American Court of Human Rights cases are of note. In *Mayagna (Sumo) Awastani Community v. Nicaragua* and *Dann v. U.S.* the Court determined that the American Convention on Human Rights protects indigenous population’s right to ancestral lands.

Human Rights on the Ground

The Panamanian government has been deficient in enforcing the territorial integrity of indigenous comarcas and non-comarca traditional indigenous lands, which has led to lost land, inadequate food production, and environmental degradation. Furthermore, forced movement off of traditional lands that are not recognized comarca territory has often occurred without compensation. Both the Madungandi and Embera people have faced considerable challenges regarding land removals and lack of compensation. Often the relocation occurs to low quality lands, which makes it difficult or impossible to support the indigenous economy, or even to grow adequate food supplies. Finally, the Naso community has been denied a comarca, which exaggerates the exploitation of their lands, and in many cases, leads to forced removal.

Recommendations

- Pass legislation providing a comarca for the Naso people.
- Assist in enforcing laws that restrict non-indigenous settlements on comarca land.
- Create a dispute resolution process for indigenous persons to adjudicate land takings.
- Compensate the Madungandi for being forced from their traditional lands. The compensation should cover the removal from the lands, compensate for the lower quality of lands, and include interest for the nearly 40 years passed without compensation.
- Compensate Embera who were removed from traditional lands without compensation.
- Implement a titling and recognition plan that proactively recognizes traditional lands.

IV. RIGHT TO HEALTH

Normative and Institutional Frameworks

Domestic Undertakings: Panama provides its citizens one of the most extensive healthcare systems in Latin America, however a majority of the indigenous population is not afforded healthcare standards as required by international law. The Panamanian government has attempted to implement international legal obligations through its Constitution, namely Chapter VI which states that it is the obligation of the government to ensure the health of the population and to develop a national policy to ensure optimal nutrition, combat disease, etc. Likewise, the Panamanian government is attempting to improve healthcare among the indigenous population by combating the main sources of disparity, these being a lack of access to healthcare and extreme poverty among the indigenous populations.

International Obligations: Article 12 of the International Covenant on Economic, Social, and Cultural Rights states that state parties must recognize the “right of everyone to the highest attainable standard of physical and mental health.” Article 25 of the Universal Declaration of Human Rights states that all people have a right to a standard of living adequate for health and well being for himself and his family, including medical care and social services. Article 24 of the U.N. Declaration on the Rights of Indigenous Peoples states that indigenous people have the right to traditional medicines, health practices, and have a right to access all health services. Article 6 of the International Covenant on Civil and Political Rights guarantees every human being the inherent right to life.

Human Rights on the Ground

The main issues regarding healthcare and the indigenous populations of Panama are a lack of access to healthcare and extreme poverty. About 82% of Panama’s indigenous populations live in remote, rural areas. Few of the communities are accessible by road and weather conditions limit access to even those with communities with roads. Health care centers are often located significant distances from the communities, making it very difficult for those in need of medical attention to access treatment. Likewise, those that are able to reach healthcare centers often choose not to due to a lack of understanding and respect for traditional medicines, treatments, and cultural customs. Indigenous populations face extremely high mortality rates resulting from complication during pregnancy and childbirth due to remoteness and lack of access to healthcare. Extreme poverty creates many issues regarding healthcare as well. Because 70% of the indigenous population lives in extreme poverty, there is a tremendous lack of food causing malnutrition among 60% of indigenous children.

Recommendations

- Increase access to healthcare by establishing clinics within the comarcas or providing emergency services that are able to access indigenous people.
- Increase physical and mental well being by educating and training western physicians in the practice and customs of traditional medicines.
- Train indigenous people as nurses and physicians.
- Implement programs to provide adequate food to indigenous communities.
- Implement programs to combat issues of poverty among indigenous populations.

V. PRISON CONDITIONS

Normative and Institutional Frameworks

Domestic Undertakings: The Panama Constitution requires that the prison system be based on principles of security, rehabilitation, and social defense, provides for the protection of the physical, mental, and social welfare, and prohibits race based discrimination. It also prohibits the application of measures that impair the physical, mental, or moral integrity of detainees, and it calls for training to be established for detainees to enable them to usefully return to society. Law 55 implements and details the concepts articulated with respect to prisons in the Constitution and mandates that the living conditions be adequately maintained and pretrial prisoners are separated from convicted inmates. The judicial procedure code states that pretrial detention “may be ordered only when all other measures are inadequate.” The Organic Law of the National Police protects the basic rights and freedoms of those within the jurisdiction of the state without discrimination and the National Police are explicitly prevented from “inflicting, instigating or tolerating acts of torture and other cruel inhuman or degrading treatment,” as are all guards under Law 55. The CERD, which mandates that all rights are enforced without discriminatory purpose or effect, is directly enforceable in Panamanian courts.

International Obligations: UDHR Article 25 and ICCPR Articles 11 and 12 state that prisoners have the right to adequate standards of living and the most attainable standards of physical and mental health. The Standard Minimum Rules for the Treatment of Offenders Rules 9-12 explains that this includes adequate health care, ventilation, floor space, and bedding. Under the UDHR Article 9, ICCPR Articles 9 and 10, and Tokyo Rules Article 6, pretrial detainees must be segregated from convicted detainees, and pretrial detention is to be used sparingly. Under the UDHR’s article 5, the American Convention on Human Rights Article 5, the Geneva Convention’s Article 3, and the Convention against Torture, prisoners are to be free from acts of torture or cruel, inhuman or degrading treatment. Under CERD Articles 1 and 5, all of these rights must be enforced without a discriminatory purpose *or* effect.

Human Rights on the Ground

Panama has enacted sufficient legislation to meet international obligations, but that legislation is not enforced. Indigenous problems are shared with the non-indigenous, but the effect on the indigenous is disproportionate to their representation in the general population. Those from impoverished backgrounds are generally the most affected, and those who lack the ability to pay for an “upgrade” may suffer by sleeping on floors and going without much food. Deficiencies in accommodations exist in the majority of prisons. Pretrial detention is the norm, leading to overcrowding; ergo, worse accommodations. Significant mental and physical abuses are officially reported, while many more occur unreported for fear of retaliation.

Recommendations

- Employ indigenous prison and ombudsman personnel capable of communicating with and sufficiently identifying the needs of non-Spanish speaking indigenous peoples
- Include a count of the indigenous peoples as a subset of those incarcerated in future censuses.
- Provide resources within the indigenous communities that help maintain family relationships with incarcerated individuals (for ex. cellular telephone towers).
- Continue the development of programs to decrease pretrial detention