



International Human Rights Clinic

University of Oklahoma College of Law

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Report on the Republic of Panama to the 36th Session of the Universal Periodic Review, Human Rights Council, April – May 2020

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## **Executive Summary**

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) submits the following report on the Republic of Panama to the 36th Session of the Universal Periodic Review (UPR), Human Rights Council. This report concerns indigenous communities of Panama and surveys Panamanian compliance with certain human rights obligations. The purpose of this report is to provide a balanced view of indigenous concerns in Panama and to recommend measures to address those concerns. This report focuses on the selected areas of: **(I)** Education and Children, **(II)** Economic Development for Indigenous Panamanians, **(III)** Land Rights, and **(IV)** Women's Rights.

### **I. Education and Children:**

**Domestic Undertakings:** On February 11, 2015, at the twenty-second session the National Report submitted by the State (A/HRC/WG.6/22/PAN/1), Panama indicated in paragraph 72 strategies for the registration of children in rural areas had been launched. Plans and strategies have been put in place, including regional offices to increase the number of prevention and care services for children. Further, the national secretariat for children has rehabilitated 40 teenagers going back to 2014, assisting them in their psychosocial lives including their performance in school. Eighty-Five percent of these teenagers rejoined the education system. Also, in 2015 a survey showed that child labor had decreased since 2008. In 2017, the government clarified penalties in the labor code for child labor, further advancing its commitment to decreasing child labor. At the thirtieth session of the Human Rights Council on July 8, 2015, the Report of the Working Group on the UPR (A/HRC/30/7) indicates the recommendation 90.106 made by Colombia, enjoyed the supported of Panama. The Recommendation 90.106 has been partially implemented by Panama. The IHRC – OU acknowledges efforts made by Panama to implement the recommendation. However, for the indigenous children from the Ipetí Emberá community in the indigenous region of Emberá (corregimiento of Torti, district of Chepo), the access and quality of education is highly deficient, and they still faced disadvantages in accessing quality teachers. Despite efforts to make the teaching profession more attractive by ensuring better work conditions and career perspectives, teachers remain insufficient and teaching precarious.

**International Obligations:** At the thirtieth session of the Human Rights Council on July 8, 2015, the Report of the Working Group on the UPR (A/HRC/30/7) indicates the recommendation 90.11 made by Italy, enjoyed the supported of Panama. It has not been implemented yet by Panama. The Optional Protocol to the Convention on the Rights of the Child on a communications procedure has not yet been ratified, being an obstacle in effective implementation of the Convention and Optional Protocols. On August 10, 1967, Panama deposited its acceptance to the UNESCO Convention against Discrimination in Education (1960). However, it is not clear what steps Panama has taken to implement this Convention within its education system. The same applies to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which also contains detailed provisions with regard to the right to education (February 2, 1993).

### **Recommendations:**

- Identify the challenges to further improvement of child labor issues and act promptly to address these challenges.
- Adopt programs, in accordance with indigenous communities, that invest in educational opportunities so that children stay in school longer before working.
- Promote initiatives aimed at insuring the relationship between education and the indigenous community.

- Ratify the UNESCO Convention against Discrimination in Education.
- Ratify the OP to the CRC on a communications procedure.
- Develop a comprehensive strategy concerning how to best structure the classroom for indigenous students, and ask the indigenous peoples whether multi-grade institutions are best for the students.
- Vigorously create access to scholarships for indigenous students.
- Establish a clear program framework that uses state funds to hire and recruit indigenous teachers who can best serve indigenous students.
- Extend a standing invitation to the Special Rapporteur on the right to education.

## **II. Economic Development for Indigenous Panamanians**

**International Provisions:** The State Party has not submitted any report to the Committee on Economic, Social and Cultural Rights since 2001. Panama has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Panama's reporting and ratification status serve as obstacles in effectively implementing economic, social, and cultural rights. Panama has worked with the UNDP to create the Strategic Governance Plan 2015-2019. The plan aims to reduce inequality and build institutional capacity. The UNDP has served as a partner to the Panamanian government in the pursuit of increasing access to basic services. The Strategic Governance Plan will enhance this partnership and particularly focus on increasing indigenous access to services. Institutional capacities will be built in agencies such as the Ministry of Social Development and the Ministry of Health. The Integrated Development Plan for Indigenous Peoples will be executed by increasing the territorial management capacities of the governance structures of the twelve indigenous territories. The UNDP will strategize to promote job creation informed by environmental and energy policy. The creation of green jobs will be encouraged (DP/DCP/PAN/3). PEG also includes steps to address development and extreme poverty in indigenous territories.

**Domestic Undertakings:** The Report of the Working Group on the UPR for the thirtieth session of the Human Rights Council (A/HRC/30/7) indicates that two recommendations enjoyed the support of Panama. The first was recommendation 90.55, made by Timor-Leste. The second was recommendation 90.110, made by Australia. These recommendations have not yet been implemented by Panama. The situation of poverty and inequality is reflected in the low standard of living in the Ipetí and Piriati Emberá indigenous communities. In 2015, Panama created an inter-institutional and civil society commission via Decree No. 393 to formulate plans and programs to ensure Panama's implementation of the Sustainable Development Goals. Panama is currently creating a comprehensive development plan for indigenous populations. This plan will ensure that steps will be taken to craft smaller development plans to reduce poverty and inequality amongst indigenous peoples, as well as to provide them with political and technical skills. On March 15, 2018, the World Bank approved a loan of \$80 million to Panama to support the National Indigenous Peoples Development Plan Project. This project aims to increase the capacities of both Panamanian and indigenous authorities to develop and carry out investments in indigenous communities. It further promotes the availability of certain public services in indigenous territories. In 2016, Act No. 37 was passed, ensuring free, prior and informed consent of indigenous peoples. The Strategic Governance Plan 2015-2019 discussed above also serves as a template for domestic action and prioritization (DP/DCP/PAN/3).

### **Recommendations:**

- Ratify the Optional Protocol to the ICESCR.

- Submit overdue reports to the Committee on Economic, Social and Cultural Rights to ensure proper implementation of Panama's obligations since 2001.
- Extend a standing invitation to the Special Rapporteur on the right to development.
- Take concrete steps to harmonize national labor legislation with international frameworks, particularly regarding trade union freedoms and collective bargaining embodied in Article 8 of the ICESCR.
- Guarantee that the agreement declared in Act No. 11 of 2012, requiring a minimum of 5 percent of the revenue from hydroelectric projects in the Ngöbe Buglé Comarca to be allocated to the Ngöbe Buglé community, is being executed. Additionally, inform the international community in Panama's next UPR report of whether this Act has been successful in reducing poverty in the community. Ultimately, in coordination with indigenous communities, enact legislation that will extend the protections guaranteed to the Ngöbe Buglé Comarca under the Act to all other indigenous communities.
- Monitor employer activity to reduce discrimination in the workplace and disproportionate provisions of labor rights based on indigenous identity per Article 2 of the ICESCR. Panama included in its candidature to the Human Rights Council (Document A/70/71) a pledge to create anti-discrimination legislation to address both public and private discrimination, including the creation of civil and criminal penalties. Panama should provide an update on the execution of this commitment.
- Provide the results of Decree No. 393 of 2015 in Panama's next UPR report. Specifically, indicate the Decree's impact on eliminating indigenous poverty.
- Adopt the necessary measures to effectively monitor progress and implementation of projects financed by the \$80 million loan supporting the National Indigenous Peoples Development Plan Project. Consultation should occur between indigenous peoples and the Panamanian government to create these measures and monitor progress.
- Adopt concrete mechanisms to guarantee consultation between indigenous communities, the government, and any third parties regarding economic development projects, in compliance with Act No. 37 of 2016. Provide data on what percentage of consultations result in indigenous communities granting their free, prior, and informed consent in such projects.

### **III. Land Rights**

**International Provisions.** Many of the concerns affecting land rights in Panama involve the land rights of indigenous peoples. It is commendable that Panama has supported multilateral declarations that voice support for indigenous peoples. Notably, Panama voted in favor of the UNDRIP in 2007. However, it is regrettable that Panama has not yet operationalized this commitment by ratifying Convention No. 169, promulgated by the International Labour Organization. Discussion surrounding Panama's relationship to this Convention has been ongoing. At the sixteenth session of the Human Rights Council on January 4, 2011, the Report of the Working Group on the UPR (A/HRC/16/6) indicates that recommendation 69.31, made by Norway, enjoyed the supported of Panama. Additionally, the recommendations 70.7 and 70.8, made by Brazil, Norway and Ecuador, were examined by Panama. At the thirtieth session of the Human Rights Council on July 8, 2015, the Report of the Working Group on the UPR (A/HRC/30/7) indicates the recommendations 90.1 and 90.2, made by Peru and Chile, enjoyed the supported of Panama. Finally, the Committee on the Elimination of Racial Discrimination (CERD/C/PAN/CO/15-20) at its seventy-sixth session from February 15 to March 12, 2010 in paragraph 22 encourages the State party to "consider ratifying those

international human rights treaties which it has not yet ratified; in particular, it urges it to consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)". These recommendations have not yet been implemented by Panama. Ratification of the Convention would further obligate the Panamanian government to protect the land rights of indigenous peoples, both on and off established Comarcas. The IHRC – OU found paucity of commitment by the State to implement the recommendations stated above.

**Case before the Inter-American Court of Human Rights.** On October 14, 2014, the Inter-American Court of Human Rights issued a judgment in a dispute captioned the Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and Their Members v. Panama. The case concerned the territorial limits of the named indigenous applicants following their removal to new territory to allow for the construction of the Bayano Hydroelectric Dam. In paragraph 232 of the Judgment, the court held that Panama was required within one year of the judgment to demarcate the lands corresponding to the Ipetí and Piriatií Emberá communities and to grant collective title of the Ipetí lands to the Ipetí Emberá community. Further, paragraph 233 obligated Panama to annul private property title that had been granted to a non-indigenous third-party within the territory of the Emberá Community of Piriatií. To date, Panama has not complied with these requirements.

**Domestic Undertakings.** Per the National Report submitted by Panama at the twenty-second session of the Human Rights Council's Working Group on the UPR (A/HRC/WG.6/22/PAN/1), prior to Panama's most recent UPR in 2015, Panama spoke of steps it had taken to implement recommendations numbered UPR-68.35, UPR-69.31, and UPR-69.32 regarding the rights of indigenous peoples. Act No. 64 of 2013, which established an Office of the Deputy Minister of Indigenous Affairs, is particularly commendable. At the time of the National Report, the Office was already being utilized for dispute resolution between the Panamanian government and indigenous communities. Presumably such dispute resolution could extend to land use and land rights issues. As noted across several reports to the UN, encroachment by third parties onto indigenous lands and Comarcas persists.

**Recommendations:**

- Ratify the ILO Convention 169 and apply its tenets in good faith to protect the land rights of indigenous communities.
- Continue the process of establishing and expanding Comarcas in coordination with indigenous peoples, faithfully applying the procedure promulgated in Act No. 72 of 2008
- During the pendency of any application to convey communal land title under Act No. 72 of 2008, abstain from any acts that would affect the existence, value, use, or enjoyment of the property in question. Additionally, abstain from actions or inactions that would allow the encroachment of property by third parties through State acquiescence.
- Take concrete steps to ensure that the Judgment of the Inter-American Court of Human Rights, dated October 14, 2014, are completely implemented in the next report. Appropriate State action will look like demarcation of the boundaries of the Ipetí and Piriatií Emberá communities and annulment of title of non-indigenous parties residing within those boundaries.
- Expand the use of the Office of the Deputy Minister of Indigenous Affairs, the Office of the Ombudsman, and other appropriate offices to facilitate resolutions for disputes involving indigenous communities. Provide details of the outcomes of all mediations

in the next report, and allow open access to the anonymized data collected during the dispute resolution process.

#### **IV. WOMEN'S RIGHTS:**

**Domestic Undertakings:** From the thirtieth session of the Human Rights Council, which met July 8, 2015, to now, IHRC – OU notes and applauds the positive efforts of Panama's partial implementation of the recommendations 90.25 through 90.33 made at the thirtieth HRC session by Timor-Leste, Uruguay, Nicaragua, Philippines, Singapore, Rwanda, Chile, Costa Rica, and Ecuador. Panama's partial implementation of the above listed recommendations have been noted through the broadened access for women to opportunities in the economic, social, cultural, and political spheres. Despite these efforts and the establishment of the National Institute for Women, whose mandate is to coordinate and monitor State compliance with improvement in areas regarding equal opportunities for women and encouragement of national awareness of issues related to gender inequality, the needs of indigenous women from the Ipetí and Piriati Emberá communities have yet to be prioritized. These programs still have great room for improvement in regard to indigenous women and cannot be considered sufficient until their needs are accounted for by such.

**International Undertakings:** Panama last submitted a report to the Committee on the Elimination of Discrimination Against Women (CEDAW) in 2008. The lack of reporting over the past decade, despite the State's obligation under article 18 of CEDAW, is a sign of ineffective monitoring by Panama and a failure to comply with their obligations under the Convention. To date, Panama is vague on how or to what extent obligations under the convention and Optional Protocol are being implementing by any branch of the government. Two letters from the rapporteur Barbara Bailey, dated September 17, 2012 and March 20, 2013, requesting clarification as to the current status of the State's response to the CEDAW recommendations, further highlights the inadequate attention the Panamanian government pays to communicating their efforts to fulfill the recommendations. Though one of the recommendations included the recognition of femicide as a special crime within the State criminal code, and the IHRC – OU recognizes Panama's completed implementation of this recommendation, lack of reporting to the CEDAW renders it difficult for the State's efforts to be recognized further. The CEDAW recommended in August of 2015 that the State employ efforts to shift the debate surrounding Law 442 of 2004 regarding the sexual and reproductive health of women. Overcoming negative public perceptions of the law will allow the law to be passed and implemented, thus increasing overall health and wellness for Panamanian women. The law should also be passed in a way that allows allocations of funds to be set forth for the education of indigenous women on reproductive and sexual health issues, as many indigenous communities consider girls to be adults and therefore prepared to reproduce at the onset of puberty. Though this is primarily a cultural issue, lack of easy and efficient access to adequate medical care for some indigenous communities transforms the issue into one of health and safety for indigenous women. The introduction of adequate education regarding the topic will promote a safer solution and thus improve the quality of health and life for indigenous women.

#### **Recommendations:**

- Prioritize the education of indigenous women and girls in order to improve the literacy rate among women, and provide information regarding the efforts and initiatives carried out in order to improve these statistics.
- Provide access to labor training programs for Indigenous women in order to improve economic advancement.
- Provide better access to improved medical care, more specifically for pregnant Indigenous women.

- Extend a standing invitation to the Special Rapporteur on violence against women.
- Submit all overdue reports in order to promote transparency and to inform the efforts made by the State in regard to recommendations made.