

Observations on the State of Indigenous Human Rights in Panama

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Summary

Indigenous Peoples in Panama urgently request implementation of Indigenous rights in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The government uses bureaucratic procedures to deny Indigenous Peoples their rights, including their freedom of expression via access to radio frequencies, and violates Indigenous land rights by refusing to title collective lands. Panama, under the veil of green energy and conservation, violates Indigenous Peoples rights by flooding Indigenous villages, sacred sites, and crops near hydroelectric dam sites. Protest against these development activities is met with violence and criminalization. Meanwhile, Indigenous Peoples' access to basic services like healthcare remains minimal and results in higher levels of malnutrition in Indigenous children.

II. Background

12.7% of Panama's population is Indigenous, and includes six Indigenous Peoples: Bri Bri, Buglé, Emberá, Kuna, Naso Teribe, Ngöbe, and Wounaan.ⁱ Two-thirds of the Indigenous population is Ngöbe, at 59.3%, and the Kuna, at 21.6%.ⁱⁱ Indigenous Peoples' lands, which encompass some of Panama's last remaining forests, have been increasingly threatened over the last decade by exploitation of natural and resources, especially mining, agroindustry, and hydroelectric dams. Displacement, as a result, leads to income instability, food insecurity, poverty and malnutrition, as well as degradation Indigenous cultures and languages. Most Indigenous people in Panama live in rural regions with poor access to education and health care. As of 2017, over 40% of inhabitants in Indigenous districts had an income below the extreme-poverty line.ⁱⁱⁱ As of 2016, poverty in Indigenous populations is about 70%, while extreme-poverty remains above 40%.^{iv} Panama supported the adoption in 2007 of the UN Declaration on the Rights for Indigenous Peoples, but has yet to ratify ILO Convention 169. After a visit to Panama in 2013, UN Special Rapporteur on the Rights of Indigenous Peoples warned that big development projects and the exploitation of natural resources were one of the most significant sources of Indigenous' rights violations worldwide.^v

III. Previous UPR recommendations still needing attention

- a. *Ratify ILO Convention No. 169 -Peru, Chile, Sierra Leone, Norway, Ecuador, Brazil, Guatemala*
- b. *Take all necessary measures to ensure that the press is not the target of undue political pressure and that freedom of the press and freedom of expression are guaranteed - Canada*
- c. *Intensify the necessary measures to guarantee the right of all children to have their birth registered, in particular children of African descent, Indigenous children and those who live in rural and border areas. - Mexico*
- d. *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. - Peru

- e. *Take appropriate measures to end illegal child labour, not least concerning Indigenous children. - Sweden*

IV. Ongoing rights violations

A) Freedom of Expression (UNDRIP Art. 16)

Indigenous Peoples have the right to their own forms of media according to UNDRIP. Panama's mainstream radio stations, television, and print media are only available in Spanish and rarely address issues that are important to Indigenous communities, particularly those in rural areas.^{vi} Mainstream media is highly controlled by the government and the private sector. Indigenous communities do not have access to media through which they can openly discuss issues such as human rights and opposition to private sector development on their lands, without fear of reprisal.

For Indigenous communities, community radio has been used as an effective tool for self-expression, human rights education, language revitalization, distance learning^{vii}, civic participation, and disaster relief coordination, and are an important tool for community development because they supply the public with an active, participatory mode of communication in rural Indigenous communities.^{viii} By broadcasting in Indigenous languages, community radio stations can contribute to Indigenous children maintaining their cultures and languages and leads to improved self-esteem and civic participation.^{ix}

Despite the importance of community radio and the rights guaranteeing Indigenous communities access, Panama's government has yet to issue a single license for an Indigenous community to operate a radio station. Panama's Ley General de Telecomunicaciones (Law 24) established in 1999, establishes frequencies of "Type A" and "Type B" the former being commercial stations and the latter being non-profit stations of educational, cultural, or related content, which are to be authorized for free after a series of requirements are met.

After faithfully meeting requirements, Indigenous communities applying for Type B licenses have repeatedly been denied licenses through imposed bureaucratic red tape, amounting to systematic discrimination. The law stipulates licenses can be applied for every year, but the agency responsible, the Autoridad Nacional de Servicios Públicos (ASEP), only opens the call for applications briefly, every 2 years. In 2016, two Indigenous communities prepared applications for licenses after extensive consultation with ASEP. An application window was given to the communities to file during a period of only 5 days. The two organizations met all of the extensive requirements listed in the Telecommunications Law for accessing a license. Members of the boards of directors of each organization traveled to Panama City to submit the application. Upon submitting the applications, they were told by ASEP that their application was missing paperwork that was not previously identified as part of the process: multiple years' history of bank statements for each individual member of each of the boards of directors the organizations.

In another example, a representative of the Guna Yala congress tried to comply with requirements but was denied. He held 3 meetings in 2018-2019 with representatives in the Office of Telecommunications regarding the requirements applying. Each time, they were told that applicants were required to have a specific amount of money in personal bank accounts, but were told that amount was anywhere between \$5,000-10,000 US dollars, an inspecificity that allows for the agency to manipulate the rules depending on the applicant.

This action by ASEP to deny Indigenous communities' licenses for radio frequencies amounts to discrimination against Indigenous Peoples and effectively limits the rights of men, women, and youth to their freedom of expression and the enjoyment of their culture, languages, and traditions.

B) Land rights violations resulting from hydroelectric dams

Panama has still yet to ratify Convention 169 of the ILO, despite eight specific recommendations to do so from both the first and second cycles of the UPR, which were largely accepted by Panama, and as recommended by previous UN Special Rapporteur on the Rights of Indigenous Peoples in his 2014 Report on Panama, the Ibero-American Convention on the Rights of Young People, the Convention on the Rights of the Child.

In 2016 Panama passed Law 37 'establishing the requirement to consultation and Free, Prior and Informed Consent of Indigenous Peoples'. This is a nominally positive step, however, Indigenous communities were not consulted in the process of developing the law itself, and better efforts need to be made to include Indigenous communities in the regulation of this law and its implementation.

In practice, since the last review the government of Panama has consistently failed to protect Indigenous citizens' land rights. Instead, the government prioritizes large-scale national development projects, which lead to human rights abuses such as displacement without compensation, violent eviction, food insecurity, and loss of cultural and spiritual sites, among others.^x

One such case is the Barro Blanco Dam on the Tabasará River. The dam, operated by Honduran company GENISA, created a 258-hectare reservoir within the province of Chiriquil flooding 6.7 hectares belonging to the Ngäbe-Buglé *comarca* — a semi-autonomous region located a few miles upstream of the dam.^{xi} Its construction and operations have not obtained the Free, Prior and Informed Consent of the local people. After a decade of conflict, extensive roundtable discussions hosted by UNDP during 2015-2016 aimed to improve consultation, but the UNDP

roundtable discussions themselves were later investigated by the agency's compliance unit and found to have also violated the communities rights to Free, Prior and Informed Consent.

In its test phase of flooding the reservoir in March of 2017, the dam flooded an area of Ngöbe-Buglé territory, including crops, eleven homes, and spiritual sites of petroglyphs and three ancestral cemeteries.^{xii} Inundated forests have already started decaying, destroying local ecosystems. In November 2017, the 28-megawatt dam entered into full commercial operation and has permanently flooded three Indigenous Ngäbe Buglé communities, including Kiad, which is the location of the sacred ceremonial sites and petroglyphs. Community member and anti-dam activist Manolo Miranda explained in November 2017 that the reservoir has had a deep psychological impact on the communities. It has impeded their mobility, flooded their crops, and bred swarms of mosquitoes that have transmitted disease among the elderly and young children.

In May 2018, GENISA carried out a massive ecocide on the Tabasará River by draining the entire river to perform maintenance, killing the entire fish population which was left to die in the mud. Although governmental environment ministry MiAmbiente arrived to investigate, the company did not face any repercussions. The Ngäbe communities surrounding the river, who depend on fish for sustenance, were left without a protein source. Additionally the river, which they also rely on for water, is surrounded by 18 hectares of deep mud, and reaching the river to bathe or to cross over to go to the nearest town has become a nearly impossible ordeal.^{xiii} These actions are in grave violation of UNDRIP and immediate action needs to be taken to restore and protect the environment as well as provide redress to the communities affected.

C) Failure to approve collective land titles

In October 2018, the Inter-American Commission on Human Rights held a public hearing on collective land titling in Panama attended by Emberá, Wounaan, Guna, Buglé, Ngäbe, Naso and Bribri representatives. Representatives denounced decades-long delays in collective land titling procedures and related the failure of the Panamanian government to include Indigenous Peoples in the stewardship of nationally designated protected areas.

Failure to move forward on land titles has resulted in settler encroachment on Indigenous lands. Darién province, an area declared a UNESCO World Heritage Site in 1981 and a National Park in 1982, failed to be titled as an Indigenous territory, and enabled illegal loggers to enter and massively deforest in 2001-2016.^{xiv}

Imposed bureaucracy and procedural delays have left communities waiting for decades for titling. For example, communities within areas annexed to the Comarca Ngäbe-Buglé, but not yet legally included within it, have been waiting 19 years for the promised demarcation of their boundaries, during which time two massive hydroelectric dams (Chan 75 and Barro Blanco) were proposed, permitted, built, and operated on the same land in question.

Collective Lands Law 72, passed in 2008 provides the framework for collective land titling outside of the Comarca system, but the law was regulated two years later by Decree 223, which excludes the participation of Indigenous communities. In 2018, Guna Lawyer Hector Huertas argued the implementation of the law has “imposed impossible additional requirements for us to be able to access... [our] lands... [Decree 223] has actually perverted the nature of the law, and it is an onerous and bureaucratic process for Indigenous communities.” Decree 223 requires the Environment Ministry to approve Indigenous land titles, which it has avoided doing by using international commitments to climate mitigation to argue that they cannot title Indigenous lands on protected areas. Concessions for extractive industries are allowed to move forward within these same protected areas.

When collective land titles are granted, there are often strings attached. The Naso community, who surround the Teribe River, have been campaigning for collective land rights for more than four decades. In 2019, the Naso Comarca in Bocas de Toro was approved in congress, but the drafting of the legislation had almost no participation of the Naso themselves, and technicalities within the law allow for the land to be sold to third parties and for dams and other extractive industries to operate with approval from the Ministry of the Environment. The bill has recently been stalled as Naso have protested its approval without their inclusion.^{xv}

D. Violence against human rights defenders

Those vocally opposed to the Barro Blanco dam have been victims of violence, threats, criminalization, and police brutality. Manolo Miranda, a former resident of the Tabasará River, has been the target of criminalization attempts. In July of 2015, GENISA accused Miranda and two other Ngäbe-Buglé leaders of instigating project delays and causing financial losses during protests at Barro Blanco’s entrance. In September 2017, a judge acquitted all three defendants.^{xvi} In May 2016, 35 community members who were protesting eviction were arrested. Police allegedly used violence against Indigenous people and injured 20 people^{xvii} who were protesting the dam in September 2016. Police allegedly entered the community, used pepper spray in every house, and used rubber bullets and birdshots against people. According to Carbon Market Watch, police have also raided hospitals to abduct the wounded, and there were reports of police raping detained Ngöbe women. These concerns were raised by a representative of the Movimiento M-10, the community resistance movement, when she testified at a hearing before the Inter-American Commission on Human Rights.^{xviii}

Perpetrators continue to enjoy impunity for acts of violence against human rights defenders. There have been no convictions for the deaths of Ngabe protestors Jerónimo Rodríguez Tugrí and Mauricio Méndez who were killed during Indigenous rights protests against dams in 2012 that were met with violent police repression.

E. Lack of Access to Health Services

Indigenous people's access to basic health care is alarmingly scarce.^{xix} Indigenous children in Panama disproportionately suffer from malnutrition, which is seen in 16-19% of all Panamanian children but approximately 50% of Indigenous children, largely in the Ngöbe-Buglé region.^{xx} Indigenous children are 3 to 5 times more likely to experience chronic malnutrition than non-Indigenous children.^{xxi} The infant mortality rate for Indigenous children is between 35.2% and 62.3%, around three-times greater than the national average.^{xxii} Infant mortality, child malnutrition, and poor child health are intricately related to access to healthcare for Indigenous women while pregnant, giving birth, and as mothers. In rural, Indigenous regions of Panama, only 29.1% of births occur in birthing institutions.^{xxiii} Indigenous women face serious barriers to access to health care services and discrimination within health care facilities. One barrier to that Indigenous women face is the lack of quality health care facilities in rural areas. Many Indigenous women have to travel far from their homes into cities in order to obtain care, and when they are able to access care, it is often culturally and linguistically inadequate. CEDAW General Recommendation 34 specifically encourages State parties to safeguard rural women's right to adequate healthcare that is culturally acceptable to them, and that health care information be widely disseminated in local languages and dialects through several media. Indigenous mothers in Panama who do not speak Spanish often have difficulties communicating symptoms to health care professionals and many times they are not allowed to be accompanied into examination rooms by family members who speak Spanish. In a study of Indigenous mothers who did give birth in an institutional setting in Panama, the likelihood that an Indigenous woman would return to the hospital for subsequent treatment was tied most sharply to perceived levels of discrimination, whether she was allowed to be accompanied by a community health worker (traditional midwife), and allowed to choose their birthing position.^{xxiv}

V) Questions:

1. How is the State of Panama guaranteeing Indigenous Peoples the right to their own media?
2. How will the State of Panama improve Indigenous children's health?

VI) Recommendations:

Cultural Survival urges the government of Panama to:

1. Facilitate the licensing of community radio stations in Indigenous comarcas under Type B as provided for in existing Telecommunications Law to encourage programming in Indigenous languages via community radio in rural areas.

2. Increase its efforts to combat impunity of human rights violations against Indigenous Peoples and persons of African descent, and desist from using violence against Indigenous protesters.
3. Take operational steps to implement UNDRIP, including the recognition of the right to land and natural resources of all Indigenous Peoples in Panama, and implement Indigenous rights as laid out in the Panama constitution.
4. Implement Law 37 “Ley que establece la consulta y el consentimiento previo, libre e informado a los pueblos indígenas” with the inclusion and participation of Indigenous communities.
5. Require independent third parties to conduct environmental and social impact assessments on large scale development projects.
6. Comply with national laws on collective land titling and facilitate the process of collective land titling for Indigenous Peoples, including Indigenous land titling within protected conservation areas, and include Indigenous Peoples in the management of protected areas, as recommended as best practice by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.
7. Ensure culturally and linguistically appropriate care for Indigenous women during pregnancy, birth, and as mothers, including by enacting policies that Indigenous women are allowed accompaniment by a traditional birth attendant in institutional settings.
8. Create and implement a National Action Plan on Indigenous Peoples

End Notes

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^v <https://news.un.org/en/story/2012/02/402572-panama-un-expert-calls-dialogue-between-government-and-indigenous-people>

^{vi} Cultural Survival, “Violaciones a la Libertad de Expresión de las Mujeres Indígenas en Guatemala” Report to CEDAW, October 2017. Accessible at https://www.culturalsurvival.org/sites/default/files/CEDAW_libertad%20de%20expresion%202017.pdf

^{vii} “Asociación Latinoamericano de la Educacion Radiofonica” <https://www.aler.org/node/1>

^{viii} Pronunciamiento de la Red Centroamericano de radios Indigenas , August 09, 2017.

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- ^x https://www.culturalsurvival.org/sites/default/files/media/panamaupr_2014.pdf
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- ^{xiv} <https://intercontinentalcry.org/iachr-demands-answers-from-panama-over-stalled-land-titles/>
- ^{xv} <https://www.laestrella.com.pa/cafe-estrella/planeta/181104/naso-comarca-genesis-controvertida>
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- ^{xvii} <https://www.business-humanrights.org/en/panama-police-injures-indigenous-people-protesting-against-flooding-related-to-the-barro-blanco-dam>
- ^{xviii} <https://www.youtube.com/watch?v=O4Y4nqw5dZU>
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