

**Panama Breached its Obligations under the
International Covenant on Civil and Political Rights to
Protect the Rights of Its Indigenous People**

Respectfully submitted to the

United Nations Human Rights Committee

*on the occasion of its consideration of the
Third Periodic Report of Panama
pursuant to Article 40 of the
International Covenant on Civil and Political Rights*

Hearings of the United Nations Human Rights Committee
New York City, United States of America
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The Program in International Human Rights Law and this “Shadow Report” to the United Nations Human Rights Committee

The Program in International Human Rights Law, Indiana University School of Law at Indianapolis, was established in 1997 to further the teaching and study of international human rights law, to promote scholarship in international human rights law, to assist human rights governmental, inter-governmental, and non-governmental organizations on international human rights law projects, and to facilitate the placement of students as law interns at international human rights organizations domestically and overseas.

The Program in International Human Rights Law welcomes the Panamanian Government's Third Periodic Report to the United Nations Human Rights Committee. In this Report, Panama asserts that it has provided adequate legislative, judicial, administrative, and other mechanisms that fulfill its obligations under the International Covenant on Civil and Political Rights (ICCPR). This shadow report reveals that Panama has not complied fully with the ICCPR mandate to protect the rights of its indigenous people.

The Program in International Human Rights Law has worked with Panamanian indigenous tribal leaders, Panamanian law students and professionals, and various indigenous NGO's located in Panama. Additionally, members of the Program in International Human Rights Law spent two weeks in Panama conducting on-the-ground research.

The PIHRL researchers could only locate Spanish-language versions of many of the source materials. PIHRL team members located no official Panamanian government translations of any law or other document we cite in this Shadow Report. Team members fluent in conversational and textual Spanish translated the materials from Spanish to English. These include team members of Latin American origin or descent (Panamanian, Colombian, Peruvian, and Belizean) and those who have spent considerable time in Latin America.

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Executive Summary

This Shadow Report provides information on Panama's obligations under the International Covenant on Civil and Political Rights (ICCPR) to provide indigenous citizens the same rights, under law, as all other citizens. Further, this report seeks to show how Panama has failed to discharge ICCPR obligations, and will offer proposed recommendations for the Government.

A. Relevant Legal Issues – Why Indigenous People are Protected under the ICCPR

As party to the ICCPR, Panama is bound to fulfill all obligations that arise under the Covenant. Under Articles 1, 2, 6, 18, 24, 25, and 27, Panama must give equal rights as they pertain to land ownership, government-provided education, health care, equal access to political participation and representation, and the opportunity to gain equal footing as it pertains to economic survival. Panama has violated its ICCPR obligations, in that the government has failed to provide indigenous citizens full rights under the above listed categories.

B. Panama has Violated Specific Rights of Its Indigenous People

The Committee is required to evaluate Panamanian laws, policies, and practices relating to its indigenous people. This report was prepared to inform and expose to the Committee, Panama, and other interested parties, that the laws, policies, and practices of Panama perpetuate a gap in the rights of indigenous people versus other people in the country. The following paragraphs highlight issues that will be described further in this report.

I. Unlawful Discrimination Regarding Property

The Panamanian government violates ICCPR, Article 1, by failing to grant indigenous people legal title to the lands that they have used and occupied for generations. Additionally, Panama violated Article 1 by allowing non-indigenous people to deforest these lands, by allowing transnational companies to encroach on indigenous lands, by restricting access to lands and resources, and by stripping indigenous lands of valuable resources. As a result, the Panamanian government has violated Article 18 by creating a situation where traditional indigenous culture and religion cannot exist.

II. Education and Unlawful Discrimination

Panama violate ICCPR, Article 2, by denying adequate educational resources for indigenous people, both in terms of physical structure and human resources. It has created an environment where most of the indigenous population will remain uneducated or under-educated at best. Panama has also violated ICCPR Article 27, by denying indigenous people the right to speak and learn in their own language, creating a barrier which many indigenous students are not able to overcome. The government has centralized the education system, denying indigenous people the

right to self-determination and collaboration in their own system. Such a denial results in a cookie-cutter approach to teaching that creates barriers to learning in the communities, whereas input from the local parents and community leaders would lead to an increase in the quantity and quality of education.

III. Discrimination, Deprivation of the Right to Life and Denial of Adequate Health Care

Panama violates ICCPR Articles 6 and 24 when the government denies indigenous people access to healthcare facilities and professionals, and created an environment where substandard prenatal care exists, where the mortality rate of children is high, and where preventative medicine is almost non-existent. Additionally, the government violated ICCPR Article 6 by discriminating against and not making available to indigenous people government-subsidized food programs, thus creating a higher-than-average malnutrition rate among indigenous people in comparison to non-indigenous people. In addition, the government funds healthcare unequally between indigenous and non-indigenous people.

IV. Denial of Political Participation and Representation

Panama violates ICCPR Article 25 when it denies indigenous people the right to political participation and representation, impinging on the functions of their culture and their rights. Panama does not recognize all of its indigenous tribes. While the government allows some tribes to have official designation, which give them in theory certain political rights, Panama has actually combined many distinct tribes with vast differences into large generic groups, thus intermingling the distinct political rights of many separate tribes into one. Tribal congresses regularly invite Panamanian officials to attend sessions wherein they devise recommendations for the Panamanian government regarding local issues. But very often the government officials do not attend, thus denying the rights of self-determination and political input stemming from these locally sanctioned congresses. Additionally, the government routinely disregards tribal recommendations and suggestions.

V. Unlawful Discrimination Causing Economic Disparity

Panama violates the indigenous right to self-determination contained in ICCPR Article 1, thus perpetuating economic disparity between its indigenous and non-indigenous people. Panama violates ICCPR Article 2(2) by discriminating against the indigenous people through the institution of economic programs tailored towards capital and urban projects, rather than rural and labor intensive programs in which the indigenous people can participate. This practice prevents indigenous people from enjoying their civil and political rights. The government violates ICCPR Article 25(a) and (c) by failing to provide adequate programs to address the economic disparity between the indigenous and non-indigenous people. This has only served to widen the economic gap between these groups, resulting in the political marginalization of indigenous people. This gap can also be traced to the government's denial of self-determination and political rights, discussed above. The government has ignored the civil and cultural differences between the indigenous and non-indigenous people. The indigenous people represent a large force of human capital, yet the government continues to fail to institute policies that can harness either this capital or create initiatives to end the poverty rampant among the indigenous people.

Proposed Recommendations to the United Nations Human Rights Committee Regarding Panama's Obligations Under the International Covenant on Civil and Political Rights to Protect the Rights of Its Indigenous People

We respectfully request that the United Nations Human Rights Committee adopt the following recommendations and urge Panama to comply fully with the ICCPR and to afford fully all rights hereunder to its indigenous people.

Unlawful Discrimination Regarding Property

Recommendation # 1 of 24: The Human Rights Committee urges Panama to enforce the laws in its Constitutional Articles 5 and 123 that protect the well-being of its indigenous citizens.

Recommendation # 2 of 24: The Human Rights Committee recommends that Panama formally and legally recognize the separate territorial rights of its indigenous people, in particular the collective territories of the Emberá, the Wounaan, the Naso and the Bri Bri, whose territories have no legal protection.

Recommendation # 3 of 24: The Human Rights Committee urges Panama to recognize that indigenous people have traditional knowledge that is invaluable to the protection of the environment and the country's resources, and to consult with the indigenous groups before making decisions that will affect indigenous people.

Recommendation # 4 of 24: The Human Rights Committee recommends that Panama institute economic policies that protect its indigenous people from the presence of multinational companies such as the Damani Beach Tourism Company in the Ngöbe-Buglé Comarca, and the Empresa ARDAN Internacional Group SA in Kuna Yala territory, as well as to protect the people and their land from the adverse impacts of multinational mining and hydro-electric projects.

Education and Unlawful Discrimination

Recommendation # 5 of 24: The Human Rights Committee recommends that Panama invest more in primary education in areas with a high concentration of indigenous enrollment.

Recommendation # 6 of 24: The Human Rights Committee recommends that Panama allocate educational resources to benefit the indigenous people proportionate to their needs.

Recommendation # 7 of 24: The Human Rights Committee recommends that Panama develop accurate bilingual teaching materials to accommodate indigenous people's local languages and customs.

Recommendation # 8 of 24: The Human Rights Committee urges Panama to provide better physical access to schools in indigenous communities and to improve their structural integrity to avoid physical harm to students.

Recommendation # 9 of 24: The Human Rights Committee recommends that Panama decentralize the management of the educational system so that indigenous communities are able to participate in the decision making process, especially concerning curricula contents.

Violation of the Right to Life by Denying Health Care

Recommendation # 10 of 24: The Human Rights Committee urges Panama to increase access to health care facilities, preventive medicine, and treatment in indigenous areas, by creating permanent health posts in these areas, or by regular visits of mobile health clinics to indigenous areas.

Recommendation # 11 of 24: The Human Rights Committee urges Panama to fight malnutrition among indigenous Panamanian children through an effective governmental distribution of subsidized food in indigenous areas.

Recommendation # 12 of 24: The Human Rights Committee recommends that Panama establish an inter-cultural health service model in medical training institutions.

Recommendation # 13 of 24: The Human Rights Committee recommends that Panama allocate and assure sufficient funding for health concerns in indigenous territories.

Denial of Political Participation and Representation

Recommendation # 14 of 24: The Human Rights Committee urges the government of Panama to apply the meaning of "Indigenous People" to groups of people that maintain their indigenous cultural identity.

Recommendation # 15 of 24: The Human Rights Committee recommends that Panama create comarcas (governmentally-recognized districts) specifically for the Wounaan people and for the Naso people, in order that those groups may have officially recognized administrative divisions with political rights.

Recommendation # 16 of 24: The Human Rights Committee recommends that Panama develop and implement comprehensive studies of the indigenous people in order to determine the real political power of the traditional indigenous authorities in the areas where they now preside. Additionally, the government should adopt or amend existing laws and regulations in order to recognize the political power of the traditional authorities.

Recommendation # 17 of 24: The Human Rights Committee recommends that Panama adopt legislation that compels the government to carry out or reply within a specific and reasonable time to the Indigenous Congresses' decrees and petitions.

Recommendation # 18 of 24: *The Human Rights Committee stresses the importance of the participation of the indigenous people and comarcas within the framework of the new environmental laws that create the Comision Consultiva Nacional del Ambiente (National Advisory Body of the Environment) and the Comision Consultiva Regional del Ambiente (Regional Advisory Body of the Environment). Although participation is limited to indigenous groups that have been granted comarca status, in matters regarding preservation of the traditional knowledge of the indigenous people on environmental conservation, Panama has an obligation to indigenous communities, not only with the comarcas.*

Unlawful Discrimination Causing Economic Disparity

Recommendation # 19 of 24: *The Human Rights Committee urges Panama not only to rigorously develop an economic assessment and gap analysis that will counter the proliferation of current poverty conditions among the indigenous tribes, but also to implement a sound strategy with long-term sustainability, reasonable time-frames, and feasible objectives in order to convert the economy from a financial bureaucracy into one that is more fluid and open-policy driven.*

Recommendation # 20 of 24: *The Human Rights Committee recommends that Panama recognize the leaders of each indigenous territory as formal representatives for each respective tribe and disseminate government plans, policies and other information through these highly-respected local leaders.*

Recommendation # 21 of 24: *The Human Rights Committee recommends that Panama develop a solid infrastructure, respecting the property rights of the indigenous people, with roadways not only leading to urban, but also to rural communities, enabling indigenous citizens to have adequate access to resources, communication, trade and distribution, knowledge, and human capital.*

Recommendation # 22 of 24: *The Human Rights Committee recommends that Panama provide reduced interest-rate loans for poverty-stricken indigenous citizens, especially those living in comarcas.*

Recommendation # 23 of 24: *The Human Rights Committee encourages Panama to court direct foreign investments in the extensive capital available in the indigenous communities through tools such as tax incentives (similar to companies investing in the expansion of the Panama Canal) which can be used by the indigenous people to develop their economies.*

Recommendation # 24 of 24: *The Human Rights Committee encourages Panama to investigate the use of organizations that could connect private investors with indigenous-owned and operated small businesses.*

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Panama Breached Its Obligations under the International Covenant on Civil and Political Rights to Protect the Rights of Its Indigenous People

I. INTRODUCTION

1. The International Covenant on Civil and Political Rights¹ is Relevant and Binding on Panama.

1.1 **ICCPR Requirements.** The ICCPR is the principal treaty setting out fundamental civil and political rights for all people, including indigenous people.² The ICCPR provides for numerous individual rights, including:

1.1.1 The right of self-determination by which all peoples “freely determine their political status and freely pursue their economic, social, and cultural development”;³

1.1.2 The right to “freely dispose of their natural wealth and resources”;⁴

1.1.3 The right to “take part in the conduct of public affairs, directly or through freely chosen representatives”;⁵ and

1.1.4 The right to “have access, on general terms of equality, to public service in his country.”⁶

1.2 Further, “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in the community with the other members of their group, to enjoy their own culture, to profess and

¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

² For a definition of indigenous people, see Jose R. Martinez Cobo, U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. On Prevention of Discrimination & Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Peoples*, ¶ 379, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, U.N. Sales No. E.86.XIV.31 (1987) (stating that “[i]ndigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”).

³ ICCPR at Part I, Art. 1(1).

⁴ *Id.* at Part I, Art. 1(2).

⁵ *Id.* at Part III, Art. 25(a).

⁶ *Id.* at Part III, Art. 25(c).

practice their own religion, or to use their own language.”⁷ Panama has signed and ratified the ICCPR and, consequently, is bound by its provisions.⁸

2. The ICCPR Imposes Obligations on the Panamanian Government under Articles 2, 25, and 27 to Protect the Rights of Indigenous People Within its Country.

2.1 **Article 2, paragraph 1, of the ICCPR** requires Panama to guarantee all rights protected under the ICCPR to all individuals in its territory, including its indigenous population, without distinction of any kind. Article 2(1) provides:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹

2.2 **Article 25 of the ICCPR** requires Panama to provide the rights and opportunities for every citizen to take part in public affairs and to have access to public service, including education, in the country. Article 25 states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

...

(c) To have access, on general terms of equality, to public service in his country.¹⁰

2.3 **Article 27 of the ICCPR** requires Panama to allow minority indigenous people to enjoy their own cultural and religious practices. Article 27 states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in the community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.¹¹

⁷ *Id.* at Part III, Art. 27.

⁸ For a thorough discussion of general international law principles and obligations arising thereunder, see George E. Edwards, *International Human Rights Law Violations Before, During, and After Hurricane Katrina: An International Law Framework for Analysis*, 31 T. MARSHALL L. REV. 353-425 (2006); *Expert Witness Affidavit of Professor George E. Edwards on International Human Rights Law, International Humanitarian Law, and International Criminal Law: U.S.A. v. David M. Hicks, U.S. Military Commissions, Guantanamo Bay, Cuba* (tendered to the Military Commissions at Guantanamo Bay on 14 Nov. 2005). See also Vienna Convention on the Law of Treaties, art. 1(a), May 23, 1969, 1155 U.N.T.S. 31 and RESTATEMENT (THIRD) OF THE LAW ON THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 3 (1987).

⁹ ICCPR at Part II, Art. 2(1).

¹⁰ *Id.* at Part III, Art. 25.

¹¹ *Id.* at Part III, Art. 27.

The Human Rights Committee has expressed that Article 27 of the ICCPR protects the right to belong to one's culture and that this right "manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous people."¹² In addition, the Human Rights Committee has stated that "[t]he enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."¹³ In accordance with Article 27, the Committee has stated, "States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end."¹⁴

3. The Human Rights Committee Challenges States to Protect Indigenous People from Discrimination and to Uphold Their Rights Under the ICCPR as Evidenced by Cases Decided By this Committee.

In 1990, the Human Rights Committee heard the case of Lubicon Lake Band v. Canada, in which the Lubicon Lake Cree Nation alleged that by allowing oil and gas development on or near the ancestral land of the Lubicon Lake Cree Nation, Canada had denied the development of the culture, way of life, and health of the community. Finding Canada had violated ICCPR Article 27, the Committee "reaffirmed that the Covenant recognizes and protects in most resolute terms a people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."¹⁵

In 1998, the Human Rights Committee decided the case of Ivan Kitok v. Sweden, in which Mr. Kitok alleged denial of his rights under ICCPR Articles 1 and 27. He claimed he was denied the right to breed animals and follow the customs of his indigenous Swedish tribe. In this decision, the Committee stated, "[t]he regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under Article 27 of the Covenant."¹⁶

Within the list of issues to be taken up in connection with the consideration of the third periodic report of Panama, the Committee has listed both point 22 and point 23 as falling under Article 27 – both points consisting of issues dealing with indigenous people.¹⁷

¹² U.N. Hum. Rts. Comm., *General Comment No 23, Article 27 (Fiftieth Session, 1994)*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev. 1 at 38 (1994).

¹³ *Id.*

¹⁴ *Id.* at ¶ 9.

¹⁵ U.N. Hum. Rts. Comm., *Lubicon Lake Band v. Canada*, Commc'n No. 167/1984, ¶ 13.3, U.N. Doc. Supp. No. 40 (A/45/40) (Mar. 26, 1990).

¹⁶ U.N. Hum. Rts. Comm., *Ivan Kitok v. Sweden*, Commc'n No. 197/1985, ¶ 9.2, CCPR/C/33/D/197/1985 (1988).

¹⁷ U.N. Hum. Rts. Comm., *List of Issues to be Taken Up in Connection with the Consideration of the Third Periodic Report of Panama*, CCPR/C/PAN/Q/3 (Nov. 26, 2007).

4. Panama Violates the ICCPR and Must Take Additional Steps to Comply with the ICCPR and its own Constitution in Protecting its Indigenous Population.

4.1 Panama has failed to fulfill its obligations under the ICCPR because discrimination continues to exist and full civil and political rights guaranteed under the Covenant have been denied, including those in the following areas, discussed *infra*:

- i. Unlawful Discrimination Regarding Property Rights (*infra*, paras 5-6)
- ii. Education and Unlawful Discrimination (*infra*, paras 7-8)
- iii. Discrimination, Deprivation of the Right to Life and Denial of Adequate Health Care (*infra*, paras 9-10)
- iv. Denial of Political Participation and Representation (*infra*, paras 11-12)
- v. Unlawful Discrimination Causing Economic Disparity (*infra*, paras 13-14)

II. UNLAWFUL DISCRIMINATION REGARDING PROPERTY RIGHTS

5. Discrimination in Denying Property Rights for Indigenous People in Panama Under ICCPR Articles 1 and 18.

5.1 ICCPR Article 1, Section 2, provides that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.¹⁸

In addition, ICCPR Article 18 states:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.¹⁹

The Committee has stated that, “[t]he concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects”²⁰ By not granting the legal possession of indigenous people’s

¹⁸ ICCPR at Part I, Art. 1(2).

¹⁹ ICCPR at Part III, Art. 18(1).

²⁰ ICCPR General Comment 22 (48th Session, 1993).

ancestral land and creating an environment where land insecurity is rampant, Panama not only violates Article 1, Section 2, but, because many indigenous people's religious beliefs center around and involve the use of land, they violate Article 18 as well.

Panama violates Articles 2(2), 2(3)(a)(b)(c), and 26, by neglecting and failing to adopt and enforce legislative and administrative measures to protect its indigenous people's land rights. As a result, land possession insecurity became one of the most common problems faced by indigenous people in Panama. Indigenous groups often lack title to lands they occupy, and even in cases where title is formally recognized it is not always enforced or respected. While there is legal recognition of property rights, as evidenced by the establishment of the *comarcas*,²¹ a number of factors remain that threaten indigenous territorial security.²² Moreover, only five of the seven indigenous groups in Panama have established *comarcas*, while the smaller tribes such as the Bri Bri and Naso have no legal title to their ancestral lands.²³ Without legal title they lack control over the land and its resources. This also discriminates directly against the indigenous people because of their spiritual, cultural, social and economic connections to those lands.²⁴ In Central America, as throughout the world, indigenous people need land security and protection of their natural resources to ensure their physical and cultural survival.²⁵

5.2 Article 5 of Panama's Constitution recognizes indigenous people's territorial rights and right to land tenure. Article 5 follows:

The Territory of the Panamanian State is politically divided into Provinces and these into districts and the districts into "corregimientos." The Law may create other political divisions, either to submit them to special regimes or for reasons of administrative or public service convenience.²⁶

Moreover, in **Article 123**, the Panamanian Constitution specifies that:

The State shall guarantee the indigenous communities reservation of the necessary lands and the collective ownership of these lands to achieve their economic and social welfare. The law will regulate procedures that must be

²¹ David E. Cahn, *Homeless for Generations: Land Rights for the Chocoe Indians from Mogue, Panama*, 28 *FORDHAM INT'L. L.J.* 232, 268 (2004).

²² Peter H Herlihy, *Participatory Research Mapping of Indigenous Lands in Darien, Panama*, *HUM. ORG.* 15 (Winter 2003), http://findarticles.com/p/articles/mi_qa3800/is_200301/ai_n9226087.

²³ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, *Panama Country Report on Human Rights Practices - 2006*, <http://www.state.gov/g/drl/rls/hrrpt/2006/78900.htm>.

²⁴ U.N. High Comm'r for Human Rights, *U.N. Guide for Indigenous Peoples, Leaflet 10: Indigenous Peoples and the Environment 2* (2001), available at <http://www.ohchr.org/Documents/Publications/Guide1Pleaflet10en.pdf>.

²⁵ *Id.* See also Martin Wagner, Earthjustice Managing Attorney, Testimony Before the Inter-Am. C.H.R. (1 Mar. 2007) (emphasizing that indigenous people's traditional lands and natural resources are important to their physical and cultural survival), available at http://www.ciel.org/Publications/IACHR_Wagner_Mar07.pdf.

²⁶ Constitución Política de la República de Panamá [Constitution] art. 5 (1994) (emphasis added) (translated by Shadow Report Authors).

followed to achieve this end and the corresponding delimitations within which private appropriation of land is prohibited.²⁷

Indigenous communities in Panama have tried to work within the framework of the Constitution and the government, but to no avail, rendering futile their Article 2(3) right to effective remedies.²⁸ The indigenous people have invited government officials to participate in their local congresses, to recognize and enforce the constitutional and legal rights the indigenous people have for their land.²⁹ In instances where the government has shown apparent concern for the rights of the indigenous people and their maintenance and preservation of their ancestral lands, it has not followed through on its promises.³⁰ This governmental inaction generates tension between the indigenous tribes and the settlers, or "*colonos*."³¹

5.3 Failure to Safeguard Ancestral Lands. Panama breached its duty under Article 2(2) to adopt measures to protect and fulfill the indivisible, interdependent, and complementary civil, political, economic, social, and cultural rights of its indigenous people. Panama failed and refused to institute and enforce measures to safeguard indigenous people's right to their ancestral domain. Only five of the country's seven indigenous groups, including the Emberá-Wounaan, Ngöbe-Buglé, and Kuna, have officially recognized *comarcas* (and thus have any legal title to their land).³² Other groups, such as the Bri-Bri and Naso communities, do not have officially recognized territories.³³ Panama breached its obligation under Article 2(3) to provide indigenous people with effective remedies to protect their land rights crucial to their enjoyment of their fundamental right to life under Article 6(1) as individuals and as a group. The lack of legal title and land security for an indigenous tribe can lead to serious consequences, as the plight of the Chocoe Indians from the village of Mogue illustrates:

The village of Mogue has been without legal title for generations.³⁴ From the 1930s to the 1950s, the Community shared the land with a coconut plantation called Patinio.³⁵ After the 1950s, the owner of Patinio harassed and tried to limit the villagers' use of the land.³⁶ In the 1990s, Ancon, a non-profit conservation group, bought the land.³⁷ Ancon prohibited the community from farming, fishing,

²⁷ *Id.* at art. 123.

²⁸ See *infra* Exhibit 2, Current Regional Wounaan Congress Resolutions, Resolution #1 (stating the current Wounaan Congress resolution pertaining to land protection).

²⁹ See *infra* Exhibit 3, Letters from Wounaan Congress to Government Officials (exemplifying an indigenous tribe that has invited government officials to participate in their Congress, to no avail).

³⁰ See *infra* Exhibit 3, Letters from Wounaan Congress to Government Officials (specifically, the Jan. 18, 2008, letter to Minister Diamante, notes that plans made as early as 2006 to build an environmental police headquarters post in the Rio Hondo community have never come to fruition).

³¹ See *infra* Exhibit 4, Affidavit of Julian Dendy, Returned Peace Corp Volunteer.

³² BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *supra* note 23.

³³ *Id.*

³⁴ David E. Cahn, *Homeless for Generations: Land Rights for the Chocoe Indians from Mogue, Panama*, 28 *FORDHAM INT'L. L.J.* 232, 234 (2004).

³⁵ *Id.*

³⁶ *Id.* at 235-36.

³⁷ *Id.* at 237.

hunting, and from using the land as it has been used for generations.³⁸ Ancon enforced its policy by force; for instance, there were reports that Ancon personnel assaulted a farmer who violated its rules.³⁹ Other reports contend that the organization's representative was known to fire shots over the heads of young boys while they fished in dugout canoes.⁴⁰ While Ancon promised the Mogue Community it could have 1,482 of Patinio's 75,000 acres, the community needs more than 1,482 acres to sustain itself.⁴¹

5.4 Violations by Private Actors. Panama violates Articles 2(2), 2(3), and 26, by neglecting and failing to institute measures to protect and provide effective remedies to violations committed by private actors against members of the indigenous communities. Panama's General Environmental Statute protects the areas inhabited by indigenous communities, especially those considered sacred or used for funerals or religious rituals, or which have a special spiritual value or are otherwise deemed important for the preservation of the indigenous cultural identity.⁴² However, although the General Environmental Statute establishes institutional protection for these areas, it has proved insufficient to protect the areas inhabited by certain indigenous people - the Wounaan people are an example.⁴³ Some of the agreements between the Wounaan people and the authorities of the Ministry of Justice and Government have been breached by the "*colonos*" (non-indigenous settlers). *Colonos* have deforested the area, resulting in a diminished forest cover, less habitat for various animal species, and has limited the means for human subsistence.⁴⁴ The *colonos* have failed to abide by agreements instituted by the government⁴⁵ and the government has been unwilling to enforce these agreements, resulting, at times, in violence.⁴⁶

³⁸ *Id.* at 238.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Ley 41, 1 July 1998, Ley General del Ambiente [Panama's General Environmental Statute], G.O. 23.578, 3 July 1998 (Pan.). (translated by Shadow Report Authors) In particular, Title 7 regulates cultural practices of the comarcas and indigenous communities and states, and protects sacred places:

Article 97: The state will respect, conserve, and maintain the knowledge, innovations and practices of the indigenous communities that have lifestyles related to conservation and sustainable usage of biodiversity, promoting its application with the participation of these communities and will assure that the derived benefits will be shared equally.

Article 100: The state guarantees and respects the areas used for cemeteries, sacred religious sites that constitute spiritual value of the comarcas or indigenous communities and whose existence is indispensable for the preservation of their identity.

⁴³ See Defensoría del Pueblo de la República de Panamá [Defender of the People of the Republic of Panama], Resolución no. 217a-02 (3 June 2002) (documenting examples of the ongoing logging of indigenous lands) (on file with Ind. Univ. – Indianapolis School of Law, Program in Int'l Human Rights Law) (translated by Shadow Report Authors).

⁴⁴ See Anibal Pastor, *El Proceso de Colonización del Darién y su Impacto en el Ambiente y la Sociedad Darienita* [The Colonization Process in the Darien and its Impact on the Environment and the Darien Society], 420 CULTURAL LOTTERY MAGAZINE 56 (1998) (noting the drastic reduction in the country's forest cover in recent decades due to the increasing amount of land given over to logging) (on file with Ind. Univ. – Indianapolis School of Law, Program in Int'l Human Rights Law) (translated by Shadow Report Authors).

⁴⁵ See *infra* Exhibit 2, Current Regional Wounann Congress Resolutions, Resolution #1 (stating the current Wounaan Congress resolution pertaining to land protection).

⁴⁶ See *infra* Exhibit 4, Affidavit of Julian Dendy, Returned Peace Corp Volunteer.

5.5 Transnational Corporations. Transnational corporations often disregard indigenous rights despite their modes of operation having been developed within legal requirements.⁴⁷ Indigenous rights are not effectively guaranteed by domestic legislation. Even in countries with effective domestic guarantees, companies often understand those rights “as extending beyond the private sector.”⁴⁸ Developing countries whose economies depend on development projects and foreign investment may find severe regulation difficult. Following are examples of large corporations exploiting indigenous land rights, and of the non-enforcement of those rights:

5.5.1 Logging.

5.5.1.1 Logging Causing Deforestation. Panama violated ICCPR Articles 1(2), 2(2), 2(3), 6(1), and 26, by failing to protect and remedy incursions into indigenous communities. Studies reveal that the rate of deforestation in Panama is high, with commercial logging greatly contributing to this phenomenon.⁴⁹ Deforestation not only impacts the flora and fauna in the region but also directly threatens the lives of indigenous people⁵⁰ who depend directly on forest products for their livelihood. For instance, forest products are used to build homes, and the jungle is also used for hunting and fishing.⁵¹ When deforestation occurs, the livelihood of indigenous people who depend on the forest is directly threatened. Reports indicate that from 1950 to 1960, forest cover declined from 68% to 58% of the country's area.⁵² In the 1990's forest cover was recorded as being 3,358,304 hectares, or 44% of the country's area.⁵³ Estimates after the 1990's show a deforestation rate of 75,000 hectares per year.⁵⁴

5.5.1.2 Logging Exploiting Indigenous Groups. Logging companies also take advantage of the dire economic situations of indigenous groups. As Manolito Kaisano, a Union Choco shop owner, explained, the Emberá may wind up selling their timber rights to loggers due to lack of employment.⁵⁵ According to Kaisano,

The lumber companies come through the communities and offer this and that, and the communities go for it

⁴⁷ Christine R. Thompson, *A Multifaceted Approach to the Regulation of Cyanide in Gold Mining Operation*, 29 SUFFOLK TRANSNAT'L L. REV. 79, 102 (2005).

⁴⁸ *Id.*

⁴⁹ WORLD RAINFOREST MOVEMENT, *Panama: Mining, Forests and Indigenous Peoples' Rights*, WRM BULLETIN 46, May, 2001, available at <http://www.wrm.org.uy/bulletin/46/Panama.html>.

⁵⁰ *Id.*

⁵¹ WORLD RAINFOREST MOVEMENT, *Panama: Protected Areas vs. Indigenous Peoples*, WRM BULLETIN 57, April, 2002, available at <http://www.wrm.org.uy/bulletin/57/Panama.html>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ WORLD RAINFOREST MOVEMENT, *Panama: Mining, Forests and Indigenous Peoples' Rights*, WRM BULLETIN 46, May, 2001, available at <http://www.wrm.org.uy/bulletin/46/Panama.html>.

⁵⁵ Scott Doggett, *In Panama's Jungle, New Roads Pit Ecotourism Against Logging*, L.A. TIMES, Sept. 21, 2004, at F4.

But they always cut more than was agreed and pay the minimum. They promise houses, roads, public services, schools, and they promise us \$10,000 or \$12,000 for 3 million board feet of wood. They give us a portion of the money and build nothing.⁵⁶

5.5.1.3 Illegal Lumber Stripping. In October 2005, loggers illegally stripped the Kuna Yala reservation of seventy acres of forest.⁵⁷

5.5.2 Mining.

5.5.2.1 Mining Destroys Ancestral Lands. Due to Panama's failure and neglect in safeguarding the right to life of members of indigenous communities under Article 6(1), private actors destroy with impunity the indigenous people's ancestral lands. Mining negatively impacts and will devastate indigenous communities,⁵⁸ if Panama does not comply with its duty under Article 2(3) to provide indigenous people with effective remedies to prevent the recurrence of similar transgressions and provide them with adequate reparations. Reports indicate that in 1994, 25% of the country was covered by mining concessions or applications.⁵⁹ Later estimates reveal that over half of Panama's national territory is open to mining concession applications.⁶⁰ Mining concessions are often granted for forest land occupied by indigenous groups. For instance, concessions have been granted in the indigenous territories of San Blas, Bocas del Toro, Veraguas and Chiriquí.⁶¹ The Panamanian Natural Resources Council reported that 70% of areas with mining potential are located on indigenous lands.⁶²

5.5.2.2 Copper and Gold Mining Concessions. Copper and gold mining concessions have already been approved on the Ngöbe-Buglé and Kuna territories. For example, a Canadian Company, Western Keltic Mines Inc., was granted a concession which covers more than 50% of Kuna territory.⁶³ Other companies, including Panacobre, a subsidiary of Tio Mine Resources Inc., Adrian Resource, and Innet Mining Corp. have also been granted concessions in the Ngöbe-Buglé territory.⁶⁴

⁵⁶ *Id.*

⁵⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *supra* note 23.

⁵⁸ WORLD RAINFOREST MOVEMENT, *Panama: Mining, Forests and Indigenous Peoples' Rights*, WRM BULLETIN 46, May, 2001, available at <http://www.wrm.org.uy/bulletin/46/Panama.html>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

- 5.5.2.3 Deforestation Linked to Mining.** The Cerro Petaquilla Project, in the Province of Colón, will clear 2,500 hectares of forests just to set up mining facilities and highways.⁶⁵ The mine will also affect the El Copé National Park and Donoso Forest Reserve.⁶⁶
- 5.5.2.4 Conflicts Between Indigenous Tribes and Mining Companies.** Mining has caused conflicts to arise between mining companies and indigenous groups. For instance, conflicts between the Canadian company Panacobre and the Ngöbe-Buglé people came as a result of copper exploitation in the Province of Chiriquí.⁶⁷ Despite the Ngöbe-Buglé National Congress' rejection of the project, the government granted a twenty-five year concession to the company, with an option for extension.⁶⁸
- 5.5.2.5 CODEMIN.** In the 1970's, the Panamanian government established the company CODEMIN. In the 1990's, the government sold CODEMIN to the Canadian company Panacobre,⁶⁹ which began work on the Cerro Colorado Mining Project in Ngöbe-Buglé territory. The Ngöbe-Buglé people, however, believe that one may not "open" the Mother Earth; consequently, this mining project threatens not only their environment, but also the spiritual connection with their land.⁷⁰

5.5.3 Tourism.

- 5.5.3.1 Damani Beach's Negative Impact.** In July, 2007, the Panamanian government granted a tourism concession in the Ngöbe-Buglé Comarca to a company called Damani Beach.⁷¹ Damani Beach signed an agreement with the Ngöbe-Buglé Regional Congress; however, this was done without the consultation of the Ngöbe people.⁷² In addition, the agreement is economically unfair towards the Ngöbe people. For example, Damani Beach agreed to pay the Regional Congress only 2% of its gains, with Damani Beach keeping the other 98%, though it would take ten years for the company to recover its initial

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ ARESIO VALIENTE LOPEZ, CONGRESOS Y ORGANIZACIONES INDÍGENAS DE PANAMÁ, INFORME SOBRE LA SITUACIÓN DE LOS PUEBLOS INDÍGENAS EN PANAMÁ [REPORT ON THE SITUATION OF INDIGENOUS PEOPLES IN PANAMA] 8 (2003), available at <http://espanol.geocities.com/armandofilos/IFSPIP.doc> (translated by Shadow Report Authors).

⁷⁰ *Id.*

⁷¹ BURICA PRESS, COMARCA NGOBE BUGLE VENDIDA A CONSORCIO DAMANI BEACH [NGOBE BUGLE COMARCA SOLD TO DAMANI BEACH CONSORTIUM], 17 July 2007, <http://burica.wordpress.com/2007/07/17/comarca-ngobe-bugle-vendida-a-consorcio-damani-beach/> (translated by Shadow Report Authors).

⁷² *Id.*

investment.⁷³ Moreover, the agreement included a “hold harmless” clause that would release Damani Beach from responsibility for any damages.⁷⁴ The Damani Beach grant would be for forty-five years with the possibility of an additional forty year extension.⁷⁵ Throughout this period, the tourism group would control exclusive alliances with hotel developers.⁷⁶

5.5.3.2 Tropical Resort International, Inc.’s Negative Impact. In 1999, the Emberà-Wounaan people of Isla San Antonio, in the Gamboa area of Lake Gatún, complained to the government about an ecotourism project being developed by Tropical Resort International, Inc.⁷⁷ The project restricted access to the only public road leading to Isla San Antonio.⁷⁸ In their complaint, the group of approximately seventy Wounaan persons pointed out that as a result they were not permitted to engage in activities basic for their subsistence, such as hunting and logging.⁷⁹ Ironically, the ecotourism project had already been allowed to clear thirty-seven hectares of forest.⁸⁰ The Panamanian Autoridad Nacional del Ambiente (National Environmental Authority) contradicted the company’s claim that the road remained open, pointing out that both ends of the road leading into the project were gated, restricting access to the indigenous population.⁸¹

5.5.3.3 Viable Ecotourism Opportunities Neglected. Despite promoting commercial ecotourism developments, the Panamanian government has neglected some ecotourism projects developed by indigenous communities. Yet community leaders from groups such as the Wounaan state that ecotourism activities have been developed by the communities and are viable and necessary for economic subsistence.⁸²

5.5.4 Hydro-electric Concessions.

5.5.4.1 Tabasara Hydro-electric Project II. In February, 2000, the Panamanian National Authority of Environment (Autoridad Nacional del Ambiente – ANAM), through Decision No IA-048-

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ ITALO ISAAC ANTINORI-BOLAÑOS, DEFENSOR DEL PUEBLO, INFORME ESPECIAL SOBRE LA SITUACION DE LOS PUEBLOS INDIGENAS EN LA REPÚBLICA DE PANAMÁ [SPECIAL REPORT ON THE SITUATION OF THE INDIGENOUS PEOPLES IN THE REPUBLIC OF PANAMA] 95 (2000) (on file with Ind. Univ. – Indianapolis School of Law, Program in Int’l Human Rights Law) (translated by Shadow Report Authors).

⁷⁸ *Id.*

⁷⁹ *Id.* at 96.

⁸⁰ *Id.*

⁸¹ *Id.* at 100-01.

⁸² Interview with Leonidez Quiroz, Wounaan indigenous leader and University of Panama law student, Panama City, Pan. (30 Jan. 2008).

2000, approved the Environmental Impact Assessment (EIA) for the execution of the Tabasara Hydro-electric Project II.⁸³ However, the Administrative Litigation Court, of the Supreme Court of Justice, suspended the above mentioned decision because the General Law of the Environment required not only the EIA, but also the previous consent of the indigenous people whose territories are going to be affected by projects.⁸⁴ These international environmental principles were reflected in Articles 48 and 50 of Law 10 of 1997 as well.⁸⁵ Nevertheless, in 2001 these provisions were modified by Law 15 which requires EIA and previous consent only if projects are going to be developed entirely (100%) in the Ngöbe-Buglé Comarca.⁸⁶ In December, 2002, the case was closed by the Supreme Court of Justice as the attorney who brought the claim became a judge.⁸⁷ In May, 2001, a petition raising the unconstitutionality of Law 15 was presented to the Supreme Court of Justice; however, it has not yet been addressed.⁸⁸

5.5.4.2 Threat of the Bonyic Hydro-electric Plant. The lives of 3,800 people from the Naso community are directly threatened by the Bonyic Hydro-electric plant.⁸⁹ The proposed dam threatens to devastate the Naso community by flooding communities, agricultural lands, and surrounding forest. The Bonyic Hydro-electric plant is owned by Hidro Ecológica del Teribe S.A., whose main shareholder is the Colombian company Empresas Públicas de Medellín (EPM).⁹⁰ The lives of the Naso people revolve around the river, which they use for fishing and transportation.⁹¹ One of the community's main concerns is the government's failure to demarcate their territory.⁹² Without legal title to their traditional territories the Naso have no control over the construction of the dam. The ongoing construction of the dam has already begun to affect them:

- Wilma Aguilar, a Naso woman, reported that road workers cleared her property on Rancho Quemado for

⁸³ Lopez, *supra* note 69 at 8.

⁸⁴ *Id.*

⁸⁵ *Id.* See also Ley 10, 7 Mar. 1997, Ley por la cual se Crea la Comarca Ngöbe-Buglé y se Toman Otras Medidas [Statute that Creates the Ngöbe-Buglé Territory and Regulates Other Matters], G.O. 23.243, 11 Mar. 1997 (Pan.) [hereinafter Ngöbe-Buglé Comarca Statute].

⁸⁶ Lopez, *supra* note 69 at 8.

⁸⁷ *Id.* at 9.

⁸⁸ *Id.*

⁸⁹ Ellen L. Lutz, *Dam Nation*, CULTURAL SURVIVAL QUARTERLY 22 (Winter 2007), available at <http://www.culturalsurvival.org/programs/panama/damnation.pdf>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

the construction of a road.⁹³ They told her she had no control over the land because it was untitled.⁹⁴

- Another Naso woman, Alicia Quintero, stated that seven people came onto her land one afternoon and told her they were going to build a road on her property.⁹⁵ She protested, but they came back three days later and cut down all her trees and crops.⁹⁶
- Six Naso men were thrown into jail for protesting the erection of the dam.⁹⁷

5.5.5 Chan 75, a dam being built in Charco la Pava, Bocas del Toro, directly threatens the Ngöbe people. This project is the joint venture of an American company and the Panamanian government; it is being built by an affiliate of the Virginia-based AES Corporation, which received a concession from the Panamanian government to build two hydro-electric dams along the Changuinola River in Bocas del Toro province.⁹⁸

5.5.5.1 Dams Negatively Impact Large Numbers of Indigenous People. The dams will affect about 3,500 indigenous people.⁹⁹ AES Changuinola stated that 1,005 people from four villages will need to move due to the inundation the dam will cause.¹⁰⁰ The proposed lake will consume lands and homes and isolate other property.¹⁰¹ The dam will also destroy transportation routes of indigenous people and will interfere with their food supply.¹⁰² In addition, the dam will prevent the migration of several fish species on which the Ngöbe depend.¹⁰³

5.5.5.2 Property Rights of Indigenous People Already Deprived. The dam has already begun to deprive indigenous people of their property rights. For example, Isabel Becker, a Ngöbe woman, was coerced into putting her thumbprint on a document she could not read; as soon as she did so, her home was bulldozed.¹⁰⁴ The following recounts Isabel's plight as reported by Ellen Lutz:

⁹³ *Id.* at 22-23.

⁹⁴ *Id.* at 23.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 22.

⁹⁸ *Id.* at 17.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 18.

[I]n January 2007, AES-Changuinola flew [Isabel] and members of her family to the company's offices in Panama City. She thought she was going for a *paseo* (a holiday). They took her on a city tour and then to AES' offices on the 25th floor of an office tower. Isabel, having never been in a city before, had no idea how to use the elevator. Once inside their offices, Humberto Gonzalez, the company's chairman, and Celia Bonilla, a Ngöbe woman who works for AES, told her that they needed to get her agreement to sell them her land that same day. Isabel understood them to mean that she could not leave their offices unless she signed. With no money for the return flight, she was dependent on the company for transportation. After 10 hours in the office she finally put her thumbprint on a prepared Spanish-language document she could not read so that she could go home.¹⁰⁵

6. Steps Panama Must Take to Comply With the ICCPR by Providing Property Rights to Its Indigenous People:

- 6.1 Panama must take concrete steps to comply with the ICCPR and its own Constitution to provide adequate property rights and enforcement of those rights to its indigenous people. We respectfully suggest the following recommendations:

Recommendation # 1 of 24: The Human Rights Committee urges Panama to enforce the laws present in its Constitutional Articles 5 and 123 that protect the wellbeing of its indigenous citizens.

Recommendation # 2 of 24: The Human Rights Committee recommends that Panama formally and legally recognize the separate territorial rights of its indigenous people, in particular the collective territories of the Emberá, the Wounaan, the Naso and the Bri Bri, whose territories have no legal protection.

Recommendation # 3 of 24: The Human Rights Committee urges Panama to recognize that indigenous groups have traditional knowledge that is invaluable to the protection of the environment and the country's resources and should consult with those groups before making decisions that will impact the lives of those people.

Recommendation # 4 of 24: The Human Rights Committee recommends that Panama institute economic policies that protect its indigenous people from the presence of multinational companies such as the Damani Beach Tourism Company in the Ngöbe-Buglé Comarca, and the Empresa ARDAN Internacional Group SA in Kuna Yala territory, as well as protect the people and their land from the adverse impacts of multinational mining and hydro-electric projects.

¹⁰⁵ *Id.*

III. EDUCATION AND UNLAWFUL DISCRIMINATION

7. Discrimination by Denying Education for Indigenous People in Panama Under Articles 2 and 27.

7.1 Failure to Provide Access to Education. Panama has failed to provide access to education to its indigenous people and failed to provide education on par with that offered to non-indigenous, violating ICCPR Article 2, Section 1, which compels the government to respect and insure to all individuals “the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁰⁶ Consequently, the lack of education among indigenous populations deprives them of rights under the ICCPR Article 25.

7.1.1 ICCPR Article 25 states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;¹⁰⁷

7.1.2 ICCPR Article 18, Section 1, states (regarding state-provided educational curriculum):

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice;¹⁰⁸

7.1.3 ICCPR Article 27 states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language;¹⁰⁹

7.1.4 ICCPR Article 19, Section 2 states that:

Everyone shall have the right to freedom of expression.¹¹⁰

7.1.5 Article 24, Section 1 states:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the

¹⁰⁶ ICCPR at Part II, Art. 2(1).

¹⁰⁷ *Id.* at Part III, Art. 25.

¹⁰⁸ *Id.* at Part III, Art. 18(1).

¹⁰⁹ *Id.* at Part III, Art. 27.

¹¹⁰ *Id.* at Part III, Art. 19(2).

right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.¹¹¹

- 7.2 Violations of ICCPR Articles 18, 19, and 27.** The Panamanian government violates Articles 18, 19 and 27, by instituting an educational curriculum that denies the indigenous people their right to speak and be educated in their own language and imposes teaching that is foreign to the indigenous values and beliefs.
- 7.3 Committee opinion re. Article 24.** The Committee has stated that under this article, “Every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children.”¹¹² The Committee has also stated, “In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression.”¹¹³ The Panamanian government has violated Article 24 by failing to enforce child labor laws and eradicate malnutrition, both of which negatively affect the child’s educational formation.
- 7.4 Panamanian Constitution and Education.** The Panamanian Constitution recognizes the right to and importance of education, stating that all have the right to education,¹¹⁴ and that public education is free at all pre-university levels and is obligatory at the primary level.¹¹⁵ The Constitution further obligates the state to develop education programs for the indigenous groups.¹¹⁶
- 7.5 Violations of ICCPR Articles 2(2), 2(3), 24, 25(c) and 26.** Panama violated Articles 2(2), 2(3), 24, 25(c), and 26, by breaching its obligation to respect the right of indigenous people to equality and non-discrimination. Many indicators illustrate the disparity in education between indigenous and non-indigenous people in Panama:
- 7.5.1 High Illiteracy Rate.** Roughly 40% of the indigenous population age fifteen and older is illiterate, compared to 6.9% illiteracy among the country as a whole for the same age group.¹¹⁷
- 7.5.2 High Repetition Rate.** In some indigenous communities the rate of repetition at the primary level is three to five times the rate of repetition in the predominantly non-indigenous provinces of Panama.¹¹⁸

¹¹¹ *Id.* at Part III, Art. 24(1).

¹¹² ICCPR General Comment 17(3), 35th Session, 1989.

¹¹³ *Id.*

¹¹⁴ Constitución Política de la República de Panamá art. 87 (1994) (translated by Shadow Report Authors).

¹¹⁵ *Id.* at art. 91.

¹¹⁶ *Id.* at art. 104.

¹¹⁷ MINISTERIO DE ECONOMIA Y FINANZAS, ENCUESTA DE NIVELES DE VIDA – 2003 [QUESTIONNAIRE ON LEVELS OF LIFE – 2003] (2005), *quoted in* NOEMÍ LUCILA CASTILLO JAÉN, PROGRAMA DE PROMOCIÓN DE LA REFORMA EDUCATIVA EN AMÉRICA LATINA Y EL CARIBE and CONSEJO DEL SECTOR PRIVADO PARA LA ASISTENCIA EDUCACIONAL, NECESITAMOS APRENDER CON CALIDAD [WE NEED TO LEARN WITH QUALITY] 9 (2007) [hereinafter APRENDER], *available at* <http://cospae.org/informe.pdf> (translated by Shadow Report Authors).

7.5.3 High Rate of Less Education. Indigenous children have seven to eight years less schooling than children in the predominantly non-indigenous province of Panama.¹¹⁹

7.5.4 High Drop-Out Rate. A majority of the children in the Emberá Comarca do not attend school beyond the primary level, while drop-out rates at the secondary level exceed 20% in the Ngöbe-Buglé Comarca, and 30% in the Kuna Yala Comarca.¹²⁰

7.6 Systemic Causation. The causes for this educational disparity are systemic in terms of the lack of accommodations the government has provided to overcome the special barriers indigenous people face, such as differences in language, location, the physical conditions of the schools, and the quality of the education. The following examples illustrate some of these factors:

7.6.1 Language Disparities.

7.6.1.1 Bilingual Education and Failure to Consult. The state has developed bilingual education in Spanish, the national language, and the indigenous language that corresponds to the location of the school.¹²¹ However, bilingual education has been met with resistance by some indigenous people due, for example, to writing and pronunciation inaccuracies of Ngöbe in the teaching materials and failure to consult the indigenous in developing the bilingual system.¹²²

7.6.1.2 Bilingual Education Protested. In 2005, the Ngöbe-Buglé community of Cerro Gato protested against bilingual education because the promoters of the bilingual education program did not speak the native language, yet there were qualified indigenous persons ready to develop a bilingual curriculum.¹²³ Furthermore, the established bilingual program threatened the indigenous culture due to the imposition of a curriculum approved by anthropologists but containing teaching foreign to the indigenous culture.¹²⁴

¹¹⁸ DEPARTAMENTO DE ESTADÍSTICAS DEL MINISTERIO DE EDUCACIÓN, ESTADÍSTICAS EDUCATIVAS 2005, [EDUCATION STATISTICS 2005] 33, available at <http://www.contraloria.gob.pa/dec/Aplicaciones/educacion/> (follow "Indicadores" hyperlink) (translated by Shadow Report Authors).

¹¹⁹ DIRECCIÓN NACIONAL DE PLANEAMIENTO EDUCATIVO, ESTADÍSTICAS EDUCATIVAS 2006 [EDUCATION STATISTICS 2006], quoted in APRENDER 10 (2007), available at <http://cospae.org/informe.pdf> (translated by Shadow Report Authors).

¹²⁰ *Id.*, quoted in APRENDER 17 (2007).

¹²¹ Eduardo Espinosa, *Rechazan Educación Bilingüe [They Reject Bilingual Education]*, LA PRENSA, May 3, 2005, available at <http://ediciones.prensa.com/mensual/contenido/2005/05/03/hoy/nacionales/207835.html> (translated by Shadow Report Authors).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

7.6.2 Location Remoteness Causing Children to Walk Many Kilometers to School.

7.6.2.1 **Cipriano Abrego Example.** Cipriano Abrego, an eighteen-year-old from the Ngöbe-Buglé town of Pueblo Mesa in Bocas del Toro, walked over seven kilometers to get to his classes at the Instituto Profesional y Técnico de Chiriquí Grande.¹²⁵

7.6.2.2 **Indigenous Children in Poor Physical Condition.** According to former Minister of Education Miguel Ángel Cañizales, some children living in rural areas have to walk ten hours barefoot to arrive at a school, and arrive malnourished and without proper materials and books.¹²⁶

7.6.3 Lack of Quality Education.

7.6.3.1 **Local Languages are Ignored.** The high drop-out rate of Kuna children from school is a product of numerous factors, including the teaching of values foreign to the indigenous and the presumption that the native language of the indigenous is Spanish.¹²⁷ According to Aiban Wagua, director of intercultural bilingual education, there is no material that teaches how to speak Spanish and the education provided by the state represents values and teaches material that is not from and has nothing to do with the indigenous culture.¹²⁸

7.6.3.2 **Little Input Taken from Local Communities.** This national emphasis derives from the fact that many decisions are made at the national level, including decisions regarding hiring of teachers, textbooks to be used, and curriculum,¹²⁹ meaning that schools have little autonomy to respond to local conditions.

7.6.3.3 **Many Children Graduate Without Basic Skills.** In the Ngöbe-Buglé community of Guacamaya, many children graduate from sixth grade without being able to write and only attend school two

¹²⁵ Itsel Miranda Jordan, *En Pueblo Mesa No Conocen La Navidad [In Pueblo Mesa They Do Not Know Christmas]*, LA PRENSA, Dec. 20 2003, available at <http://ediciones.prensa.com/mensual/contenido/2003/12/20/hoy/nacionales/1423819.html> (translated by Shadow Report Authors).

¹²⁶ Miguel Ángel Cañizales, *Esperanzas para la Juventud Rural [Hope for Rural Youth]*, LA PRENSA, Feb. 3, 2006, available at <http://ediciones.prensa.com/mensual/contenido/2006/02/03/hoy/opinion/486358.html> (translated by Shadow Report Authors).

¹²⁷ Carolina Proaño Wexman, *Educación Bilingüe en Kuna Yala [Bilingual Education in Kuna Yala]*, LA PRENSA, Apr. 22, 2006, available at <http://mensual.prensa.com/mensual/contenido/2006/04/22/hoy/vivir/574813.html> (translated by Shadow Report Authors).

¹²⁸ *Id.*

¹²⁹ APRENDER, *supra* note 117, at 22.

days a week.¹³⁰ At age ten, Richard Brenes, from Kuna Yala, did not know how to read or write his name and at age twelve was starting second grade.¹³¹

7.6.4 Unequal Reinvestment Among Indigenous Schools. From 1991 to 2001, Panama spent more than 21% of its total education budget on the education of the people in the top 20% of the country's income levels, while the poorest 20% received 12% of total spending.¹³² Panama spends nearly one-quarter of the education budget on university education, where there is very little indigenous participation.¹³³

7.6.5 Poor Physical Condition of Educational Facilities.

7.6.5.1 Indigenous schools often lack electricity, potable water, and sanitary facilities.¹³⁴

7.6.5.2 In the Ngöbe-Buglé town of Guacamaya, the school is made out of rickety, rotted wood.¹³⁵

7.6.5.3 In the Wounaan community, the tribal congress noted the inability to teach grades beyond nine due to the lack of space, and has expressed these concerns to the government, to no avail.¹³⁶

7.6.6 Wide-Spread Malnutrition as it Affects Education. Over 56% of rural indigenous children under the age of five suffer from chronic malnutrition.¹³⁷

7.6.7 Extensive Child Labor as it Negatively Affects Education.

7.6.7.1 Indigenous Child Labor is Disproportionately High. 14.3% of indigenous children between the ages of five and seventeen do

¹³⁰ Paco Gómez Nadal, *Salto al País Llamado Pobreza [Jump to a Country Called Poverty]*, LA PRENSA, Jan. 8, 2007, available at <http://mensual.prensa.com/mensual/contenido/2007/01/08/hoy/panorama/848618.html> (translated by Shadow Report Authors).

¹³¹ Arcadio Bonilla, *La Agonía de una Escuela Kuna en la Ciudad Capital [The Agony of a Kuna School in the Capital City]*, LA PRENSA, Mar. 14, 2006, available at <http://mensual.prensa.com/mensual/contenido/2006/03/14/hoy/nacionales/531919.html> (translated by Shadow Report Authors).

¹³² THE WORLD BANK, WORLD DEVELOPMENT REPORT 2004 at 257 (2003), available at <http://go.worldbank.org/H1Q3T60M80> (search for "report 26895"; then follow "World Development Report 2004: Making services work for poor people (English)" hyperlink, then follow "PDF" hyperlink under Official Documents) (translated by Shadow Report Authors).

¹³³ APRENDER, *supra* note 117, at 26.

¹³⁴ Toribia Venado Venado, *La infancia de la Niñez Indígena [The Infancy of the Indigenous Childhood]*, LA PRENSA, Feb. 11, 2005, available at <http://mensual.prensa.com/mensual/contenido/2005/02/11/hoy/opinion/130489.html> (translated by Shadow Report Authors).

¹³⁵ Gómez Nadal, *supra* note 130.

¹³⁶ See *infra* Exhibit 2, Current Regional Wounaan Congress Resolutions, Resolution #3.

¹³⁷ MINISTERIO DE ECONOMIA Y FINANZAS, ENCUESTA DE NIVELES DE VIDA – 2003 [QUESTIONNAIRE ON LEVELS OF LIFE – 2003] at 11 (2005) (Pan.), available at <http://www.presidencia.gob.pa/senapan/Documentos/pobrezaPma.pdf> (translated by Shadow Report Authors).

some type of child labor.¹³⁸ This almost doubles the national average of 7.6% for the same age group.¹³⁹

7.6.7.2 Indigenous Child Labor has a Negative Impact on Learning.

Children who work go to school when they can, causing them to fall behind due to missed classes. One such child is Ramón Avilés from the Ngöbe-Buglé district of Tolé, Chiriquí, who at age thirteen had only completed the third grade because he had to work with his family in coffee plantations.¹⁴⁰

8. Steps Panama Must take to Comply with the ICCPR by Providing Adequate Education to its Indigenous People:

8.1 Panama must take concrete steps to comply with the ICCPR and its own Constitution to provide adequate education to its indigenous people. We respectfully suggest the following recommendations:

Recommendation # 5 of 24: The Human Rights Committee recommends that Panama invest more in primary education in areas with a high concentration of indigenous people enrolled.

Recommendation # 6 of 24: The Human Rights Committee recommends that Panama allocate educational resources to benefit the indigenous people proportionate to their needs.

Recommendation # 7 of 24: The Human Rights Committee recommends that Panama develop accurate bilingual teaching materials to accommodate indigenous people's local languages and customs.

Recommendation # 8 of 24: The Human Rights Committee urges Panama to provide better physical access to schools in indigenous communities and to improve the structural integrity to avoid physical harm to students.

Recommendation # 9 of 24: The Human Rights Committee recommends that Panama decentralize the management of the educational system so that indigenous communities are able to participate in the decision making process, especially curricula contents.

¹³⁸ INT'L LABOR ORG., TRABAJO INFANTIL Y PUEBLOS INDÍGENAS [CHILD LABOR AND INDIGENOUS PEOPLES] 37 (2006), available at <http://white.oit.org.pe/ipec/documentos/panama.pdf> (translated by Shadow Report Authors).

¹³⁹ *Id.*

¹⁴⁰ Sandra Alicia Rivera, *Los Niños que Han Perdido la Infancia en los Cafetales* [The Children Who Have Lost Their Infancy in Coffee Plantations], LA PRENSA, Dec. 27, 2005, available at <http://mensual.prensa.com/mensual/contenido/2005/12/27/hoy/nacionales/449525.html> (translated by Shadow Report Authors).

IV. DISCRIMINATION, DEPRIVATION OF THE RIGHT TO LIFE AND DENIAL OF ADEQUATE HEALTH CARE

9. Discrimination, Deprivation of the Right to Life, and Denial of Adequate Health Care for Indigenous People in Panama Under Articles 6 and 24.

9.1 ICCPR Article 6, Section 1, states that, "Every human being has the inherent right to life. This right shall be protected by law."¹⁴¹ The Committee has stated that the protection of this right requires the state to take positive measures, such as measures to reduce infant mortality, increase life expectancy, and eliminate malnutrition.¹⁴²

The Panamanian government violates ICCPR Articles 6 and 24 by not providing adequate medical care to the indigenous; as a result the indigenous suffer from sickness, disease, and malnutrition.

Article 52 of the Constitution of Panama requires the state to protect the physical, mental and moral health of minors, the elderly, and the very sick,¹⁴³ and recognizes each individual's right to maintain good health.¹⁴⁴ Further, the Constitution specifies that the State should develop its citizens' good health through illness prevention, recovery, and rehabilitation.¹⁴⁵ The Ministry of Health of Panama includes a unit responsible for the health of indigenous people;¹⁴⁶ however, many indigenous Panamanians are deprived of this right as evidenced by their limited access to health care facilities, high rates of disease and malnutrition, and lack of pre-natal and maternal health care.

9.2 Panama violated ICCPR Articles 2(2), 2(3), 24, 25, and 26, by discriminating against, neglecting, and failing to provide indigenous people equal access to adequate health services, thereby threatening their right to life. Panama's indigenous population has to travel further to find health services, and suffers from higher rates of disease and malnutrition, than does the rest of the Panamanian population.¹⁴⁷ The following are examples of and results stemming from the lack of access to health care facilities:

9.2.1 **Health Care Facility Remoteness.** The average time needed to reach a health service in rural indigenous areas was fifty-nine minutes, compared to

¹⁴¹ ICCPR, Part III, Art. 6(1).

¹⁴² ICCPR General Comment 6(1)(5), 16th Session, 1982.

¹⁴³ Constitución Política de la República de Panamá art. 52 (1994) (translated by Shadow Report Authors).

¹⁴⁴ *Id.* at art. 105.

¹⁴⁵ *Id.* at art. 106.

¹⁴⁶ Pan Am. Health Org., *Health of Indigenous People: A Challenge for Public Health*, Aug. 15, 2002, <http://www.paho.org/english/DPI/100/100feature32.htm>. This unit was created in January, 1999.

¹⁴⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *supra* note 23.

twenty-five minutes in urban areas.¹⁴⁸ The lack of hospitals in *comarca* lands contributes to the difficulty in accessing healthcare.¹⁴⁹

- 9.2.2 Lack of Doctors.** In 1998, Panama had one doctor for every 795 inhabitants, but in the Ngöbe-Buglé Comarca, there was one doctor for every 49,459 inhabitants.¹⁵⁰ Nationally, there was one dentist per 3,507 inhabitants, and one nurse per 868 inhabitants, compared to one dentist per 74,189 inhabitants and one nurse per 37,095 inhabitants in the Ngöbe-Buglé Comarca.¹⁵¹
- 9.2.3 Diarrhea Mortality.** From 1994-1998, the province of Bocas del Toro, whose population is predominantly Ngöbe-Buglé, recorded a mortality rate from diarrhea over five times greater than the national rate.¹⁵² In general, there is a scarcity of potable water and of latrines in Ngöbe-Buglé territory.¹⁵³
- 9.2.4 Cholera.** In San Blas, home to the Kuna people, the highest incidence of cholera recorded in Panama occurred in 1993, at a rate eight times the national level.¹⁵⁴ The rate of pneumonia in San Blas in 1994 was six times the national rate.¹⁵⁵
- 9.2.5 Low Retinol.** The National Vitamin A Survey of 1992 found low retinol levels in indigenous children aged one through five years at a rate two and one-half times that of the non-indigenous population.¹⁵⁶
- 9.2.6 Rampant Tuberculosis.** The Ngöbe-Buglé Kuerima people, in the province of Chiriquí, suffer from rampant tuberculosis and leishmaniasis due to a shortage of doctors and difficulties accessing medicine and treatment.¹⁵⁷
- 9.2.7 Lack of Transportation.** In some communities there exists not only a lack of medical facilities, but no method to transport patients who are in need of medical attention to any adequate facility.¹⁵⁸

¹⁴⁸ U.N. POPULATION FUND [UNFPA], *INDIGENOUS WOMEN AND THE UNITED NATIONS POPULATION FUND 78 (2007)*, available at <http://www.un.org/esa/socdev/publications/Indigenous/Chapter%205.pdf>.

¹⁴⁹ PAN AM. HEALTH ORG., *SALUD DE LOS PUEBLOS INDÍGENAS: EL CASO DE LOS NGÖBE-BUGLÉ DE PANAMÁ [HEALTH OF INDIGENOUS PEOPLE: THE CASE OF THE NGÖBE-BUGLÉ OF PANAMA]* ix (2000), on file with Ind. Univ. – Indianapolis School of Law, Program in Int'l Human Rights Law [hereinafter SALUD] (translated by Shadow Report Authors).

¹⁵⁰ *Id.* at 30.

¹⁵¹ *Id.*

¹⁵² PAN AM. HEALTH ORG., *HEALTH IN THE AMERICAS, VOL. II 393 (1998)*, available at

<http://www.paho.org/English/HIA1998/Panama.pdf>. Specifically, the Bocas del Toro rate was 34.4 per 100,000 compared to the national rate of 6.4 per 100,000. *Id.*

¹⁵³ SALUD, *supra* note 149 at ix.

¹⁵⁴ PAN AM. HEALTH ORG., *supra* note 152 at 393. The incidence of cholera in San Blas in 1993 was 14 per 10,000. *Id.*

¹⁵⁵ *Id.* The rate of pneumonia in San Blas in 1994 was 12 per 1000. *Id.*

¹⁵⁶ *Id.* The rate of low retinol levels among indigenous children was 13%, compared to 5% in nonindigenous children. *Id.*

¹⁵⁷ Sandra Alicia Rivera, *Se Propaga la Leishmaniasis y la Tuberculosis en Kuerima [Leishmaniasis and Tuberculosis are Spreading in Kuerima]*, LA PRENSA, Apr. 20, 2000, at A8, available at <http://biblioteca.prensa.com/contenido/2000/04/34k32325.html> (translated by Shadow Report Authors).

¹⁵⁸ See *infra* Exhibit 2, Current Regional Wounaan Congress Resolutions, Resolution #2.

- 9.3 Panama Breaches ICCPR Articles 2, 6, and 24.** Panama breaches its duty to respect and protect indigenous children's right to life under Article 6(1), and to be free from discrimination under Articles 2(1) and 24, by failing to provide adequate health care. Indigenous children in Panama show high rates of malnutrition and infant mortality in absolute terms, and significantly higher rates than non-indigenous Panamanian children, as evidenced by the following statistics:
- 9.3.1 High Mortality Rate.** Indigenous infants in Panama have a mortality rate at least three and one-half times the national rate.¹⁵⁹
- 9.3.2 Lack of Immunizations.** In some districts, only 20% of Ngöbe-Buglé children under one year of age receive immunizations.¹⁶⁰
- 9.3.3 High Rate of Malnutrition.** Half of all indigenous children suffer from some type of malnutrition, compared to 10% of the national population.¹⁶¹ More than half of all indigenous Panamanian children are underweight.¹⁶² Indigenous children living in *comarcas* have a higher rate of malnutrition (51%) than those living outside *comarcas* (24%).¹⁶³ Ngöbe-Buglé children suffer the highest rates of malnutrition of all indigenous children.¹⁶⁴ Panama is one of two Central American countries that experienced a rise in the chronic malnutrition of children under age five in the years 2000 – 2006.¹⁶⁵
- 9.3.4 Malnutrition Causes Deaths.** In August and September of 2007, Ngöbe officials reported forty-two deaths, mainly of children, from an unknown illness.¹⁶⁶ The Panamanian Health Ministry blamed the deaths on an unusually severe virus that malnourished persons would not be able to withstand, and confirmed only ten deaths.¹⁶⁷ The UNICEF director in Panama stated that the deaths are a result of malnutrition.¹⁶⁸
- 9.4 Panama Violates Articles 2(1), 2(2), 2(3), 3, 6(1), 25(c), and 26, by Discriminatorily Neglecting and Refusing to Provide Indigenous Women with Equal Access to Proper Maternal Health Care. Panama has Provided Inadequate Health Care, thus Discriminating Against the Indigenous People**

¹⁵⁹ PAN. AM. HEALTH ORG., HEALTH IN THE AMERICAS VOL. 1 at 181 (2002). The infant mortality rate for indigenous Panamanians is sixty to eighty deaths per 1000 live births, compared to the national rate of 17.6 deaths per 1000 live births. *Id.*

¹⁶⁰ SALUD, *supra* note 149 at 22.

¹⁶¹ *Id.*

¹⁶² *Id.* at viii.

¹⁶³ *Id.* at 22.

¹⁶⁴ *Id.* Specifically, 49% of Ngöbe-Buglé children suffer from some type of malnutrition, and 48% suffer from chronic malnutrition; 35% of Kuna children suffer from some type of malnutrition, and 32% from chronic malnutrition; and 36% of Embera-Wounan children suffer from some type of malnutrition, 33% from chronic malnutrition. *Id.*

¹⁶⁵ U.N. Children's Fund [UNICEF], *At a Glance: Panama*, <http://www.unicef.org/infobycountry/panama.html> (last visited Mar. 5, 2008).

¹⁶⁶ Eric Jackson, *Rash of Child Deaths in One District of the Ngöbe-Bugle Comarca*, PANAMA NEWS, Oct. 7-20, 2007, www.thepanamanews.com/pn/v_13/issue_19/news_01.html.

¹⁶⁷ *Id.*

¹⁶⁸ Reuters, *U.N. Says Panama Mystery Disease is Malnutrition*, Oct. 5, 2007, available at www.reuters.com/article/healthNews/idUSN0526949720071005.

and Threatening their Right to Life. The following examples illustrate the dire situation of maternal health and care in indigenous Panama:

- 9.4.1 Rural Indigenous Mortality Rate Three Times Urban Rate.** The maternal mortality rate in rural and indigenous areas in 2000 was three times that of the urban rate.¹⁶⁹ The urban rate remained stable in succeeding years while the indigenous rural rate jumped over 44%.¹⁷⁰ The maternal mortality rate in the Ngöbe territory in 2003 was 283 per 100,000 live births.¹⁷¹
- 9.4.2 Lack of Prenatal Care.** Nationwide, 90% of Panamanian women receive some type of pre-natal care; however, only 58% of indigenous women receive some type of pre-natal care.¹⁷²
- 9.4.3 Lack of Professional Childbirth Care.** In rural indigenous areas, only one-quarter of all births are attended by a medical doctor, compared to 82% nationwide.¹⁷³ 32% of rural indigenous births were attended in public or private health institutions, compared to a national rate of 86%.¹⁷⁴ 68% of all rural indigenous births occurred at home, while the national rate was 13%.¹⁷⁵
- 9.4.4 United Nations Population Fund Research.** Panama's breach of its obligation to respect, protect, and fulfill the right to equality and non-discrimination of indigenous people under Articles 2(1), 2(2), 2(3), 3, 6(1), 24, 25, and 26 becomes glaring in light of the health problems bedeviling indigenous communities. A project carried out by the United Nations Population Fund, supported by the Ministry of Health of Panama, found problems implementing good maternal health practices in Ngöbe territory for several reasons:
- No intercultural health service model has been institutionalized or is being taught in schools or medical training facilities;¹⁷⁶
 - Traditional Ngöbe birth attendants are not fully accepted by Panamanian health officials for cultural and institutional reasons;¹⁷⁷
 - The government provides insufficient budgetary provisions for Ngöbe Indigenous Territory health concerns, including for sexual and reproductive health programs;¹⁷⁸

¹⁶⁹ U.N. POPULATION FUND [UNFPA], *supra* note 148. The indigenous rural rate was ninety per 100,000 live births, compared to an urban rate of thirty per 100,000 live births. *Id.*

¹⁷⁰ *Id.* The rural rate climbed to 130 per 100,000 live births. *Id.*

¹⁷¹ *Id.*

¹⁷² SALUD, *supra* note 149 at 22.

¹⁷³ U.N. POPULATION FUND [UNFPA], *supra* note 148.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 83.

¹⁷⁷ *Id.*

- Discrimination against indigenous people persists and hampers efforts to provide adequate health care.¹⁷⁹

10. Steps Panama Must Take to Comply with the ICCPR by Providing Adequate Health Care to its Indigenous People:

- 10.1 Panama must take concrete steps to comply with the ICCPR and its own Constitution to protect the indigenous people from discrimination by providing them with adequate health care and ensuring their right to life. We respectfully suggest the following recommendations:

Recommendation # 10 of 24: The Human Rights Committee urges Panama to increase access to health care facilities, preventive medicine, and treatment in indigenous areas, by the establishment of permanent health posts in these areas, or by regular visits of mobile health clinics to indigenous areas.

Recommendation # 11 of 24: The Human Rights Committee urges Panama to fight malnutrition among indigenous Panamanian children through an effective governmental distribution of subsidized food in indigenous areas.

Recommendation # 12 of 24: The Human Rights Committee recommends that Panama establish an inter-cultural health service model in medical training institutions.

Recommendation # 13 of 24: The Human Rights Committee recommends that Panama allocate and assure sufficient funding for health concerns in indigenous territories.

V. DENIAL OF POLITICAL PARTICIPATION AND REPRESENTATION

11. Discrimination by Denying Political Representation for Indigenous People in Panama Under ICCPR Article 25.

- 11.1 **Lack of Governmental Recognition.** Despite the efforts of the Panamanian government, indigenous people in Panama still lack political participation. Panama has violated these rights under Article 25, which is crucial to their enjoyment of their right to life (Article 6(1)) and preservation of their cultural identity under Article 27. The Panamanian government recognizes five *comarcas* that constitute the territory of different indigenous people with political autonomy.¹⁸⁰ The *comarcas* are: Comarca

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See Ley 16, 16 Feb. 1953, Ley por la Cual se Organiza la Comarca de San Blas [Statute that Organizes the Territory of San Blas], *as amended*, Gaceta Oficial [G.O.] 12.042, 7 Apr. 1953 (Pan.) [hereinafter Kuna Yala Comarca Statute]; Ley 22, 8 Nov. 1983, Ley por la cual se Crea la Comarca Emberá de Darién [Statute that Creates the Emberá Territory of Darién], *as amended*, G.O. 19.976, 17 Jan. 1984 (Pan.) [hereinafter Emberá-Wounaan Comarca Statute]; Ley 24, 12 Jan. 1996, Ley que Crea la Comarca Kuna de Madungandi [Statute that Creates the Kuna Territory of Madungandi], G.O. 22.951, 15 Jan. 1996 (Pan.) [hereinafter Kuna Madungandi Comarca Statute]; Ngöbe-Buglé Comarca Statute; Ley 34, 25 June 2000, Ley que Crea la Comarca Kuna de Wargandi

de Kuna Yala, Comarca Emberá Darién, Comarca Kuna de Madungandi, Comarca Ngöbe-Bugle, and Comarca de Wargandi.¹⁸¹ Although the Panamanian government has officially recognized these five territories, Panama continues to violate ICCPR Articles 1, 2(1), 2(2), 2(3), 6(1), 26, and 27 by failing to grant *comarca* territorial status to other indigenous people and to adopt measures to enable indigenous people to fully enjoy their interdependent and indivisible civil, political, cultural, economic, and social, cultural, civil, and political rights, in full equality and without discrimination. In addition, the government has failed to acknowledge and/or consider the requests of indigenous people as submitted through the political systems, where they exist, established by the government for submission of such requests.

The following are examples of the violations of the Panamanian government as they pertain to the political representation and the State's obligations under the ICCPR:

- 11.1.1 **“Indigenous People” Not Recognized in Official Statements.** The Panamanian government has failed to adopt the term “Indigenous People” in its indigenous legislation, and official statements concerning this legislation refer only to the “sovereignty of the Panamanian people” as it relates to the Constitution.¹⁸²
- 11.1.2 **Lack of *Comarca* Status.** The Panamanian government has granted *comarca* status neither to the Naso o Teribe indigenous people nor to the Wounaan indigenous people.¹⁸³
- 11.1.3 **Wounaan People Not Recognized.** The Panamanian government fails to acknowledge the cultural identity of the Wounaan indigenous people.¹⁸⁴ This is a result of Panama creating the Emberá-Wounaan Comarca, which combines two different indigenous peoples that speak different languages.¹⁸⁵ The resulting consolidation threatens the identity and survival of the Wounaan people, as they are distinctive culturally from the other indigenous group but represent the minority within the Emberá-Wounaan Comarca.¹⁸⁶

[Statute that Creates the Kuna Territory of Wargandi], G.O. 24.106, 28 July 2000 (Pan.) [hereinafter Kuna Wargandi Comarca Statute].

¹⁸¹ See Kuna Yala Comarca Statute, Emberá-Wounaan Comarca Statute, Kuna Madungandi Comarca Statute, Ngöbe-Buglé Comarca Statute, Kuna Wargandi Comarca Statute.

¹⁸² See Alexis Alvarado, *Análisis Jurídico de la Aplicación de la Ley General de [sic] Ambiente de la República de Panamá (Ley No. 41, de 1 de Julio de 1998) en las Comarcas y Pueblos Indígenas de Panamá [Legal Analysis of the Application of the Environmental Statute of Republic of Panama (Statute 41, 1 July 1998) on the Indigenous Territories and Peoples of Panama]* (2002) (unpublished LL.B. thesis, Panama University) (on file with Ind. Univ. – Indianapolis School of Law, Program in Int'l Human Rights Law) (translated by Shadow Report Authors).

¹⁸³ *Id.* at 63, 68; interview with Leonidez Quiroz, Wounaan indigenous leader and University of Panama law student, Panama City, Pan. (19 Dec. 2007).

¹⁸⁴ Quiroz, *supra* note 183; interview with Horacio H. Rivera, Coordinator of Economic Development and Indigenous Politics at the Institute of National Studies (IDEN), Panama City, Pan. (20 Dec. 2007); interview with Elmer Cabezón, Wounaan indigenous chief of the Darién region, Panama City, Pan. (21 Dec. 2007).

¹⁸⁵ Alvarado, *supra* note 182 at 54.

¹⁸⁶ Quiroz, *supra* note 183; Rivera, *supra* note 184; Cabezón *supra* note 184.

11.1.4 **Lack of Recognition of Local Authority.** The Panamanian Indigenous Legislation does not recognize the proper role of the traditional indigenous authorities, nor does it acknowledge their real power.¹⁸⁷ For example, the Kuna Yala Statute fails to acknowledge that the Sahilas (indigenous chiefs) are the Kuna representatives to the Panamanian government and that Sahilas exercise power over all the people, indigenous and non-indigenous, living in Kuna territory.¹⁸⁸

11.1.5 **Government Disregards Indigenous People Congress.** The Panamanian government has ignored the Indigenous People Congress' decrees and petitions. For example, none of the invited public officials attended the 2008 Wounaan Regional Congress, Chiman District.¹⁸⁹ Furthermore, the government has not made any official statement or response to the Wounaan's petitions and decrees.¹⁹⁰

12. Steps Panama Must Take to Comply with the ICCPR by Providing Adequate Political Representation and the Ability to Politically Participate to Its Indigenous People:

12.1 Panama must take concrete steps to comply with the ICCPR and its own Constitution to provide adequate political representation and the ability for the indigenous citizens to participate in government. We respectfully suggest the following recommendations:

Recommendation # 14 of 24: The Human Rights Committee urges the government of Panama to apply the meaning of "Indigenous People" to groups of people that maintain the indigenous cultural identity.¹⁹¹

Recommendation # 15 of 24: The Human Rights Committee recommends that Panama create *comarcas* specifically for the Wounaan people and for the Naso people, in order that those groups may have officially recognized administrative divisions with political rights.

Recommendation # 16 of 24: The Human Rights Committee recommends that Panama develop and implement comprehensive studies of the indigenous people in order to determine the real political power of the traditional indigenous authorities in the areas where they now reside. Additionally, the government should adopt or amend existing laws and regulations in order to recognize the political power of the traditional authorities.

¹⁸⁷ Alvarado, *supra* note 182 at 140.

¹⁸⁸ *Id.*

¹⁸⁹ See *infra* Exhibit 3, Letters from Wounaan Congress to Government Officials (containing invitations to state officials to attend local congress sessions, and confirmations that these officials did not attend).

¹⁹⁰ See *infra* Exhibit 1, Affidavit of Elmer Cabezón, Regional Wounaan Congress Indian Chief and Representative (explaining the Congressional process and the lack of recognition by the Panamanian Government).

¹⁹¹ See Alvarado, *supra* note 182 at 85.

Recommendation # 17 of 24: The Human Rights Committee recommends that Panama adopt legislation compelling the government to carry out or reply within a specific and reasonable time to the Indigenous Congresses' decrees and petitions.

Recommendation #18 of 24: The Human Rights Committee stresses the importance of the participation of the indigenous people and Comarcas within the framework of the new environmental laws that create the *Comision Consultiva Nacional del Ambiente* (National Advisory Body of the Environment) and the *Comision Consultiva Regional del Ambiente* (Regional Advisory Body of the Environment).¹⁹² Although participation is limited to indigenous groups that have been granted *comarca* status, in matters regarding preservation of the traditional knowledge of the indigenous people on environmental conservation, Panama has an obligation to indigenous communities, not only to the *comarcas*.¹⁹³

VI. UNLAWFUL DISCRIMINATION CAUSING ECONOMIC DISPARITY

13. Discrimination by Perpetuating Economic Disparity for Indigenous People in Panama under Articles 1 and 25.

13.1 Article 1, Section 1 of the ICCPR states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁹⁴

Panama's violation of the right to self-determination has been covered in Section V of this report. Along with violations of Articles 2(1), 2(2), 2(3), 6(1), 25(a), 25(c), 26, and 27, Panama's breach of Article 1(1) resulted in economic disparity between those citizens with political representation and the ability to participate in self-determination resulting in the ability to freely pursue economic development, and the indigenous people who have no such right. Additionally, Article 25 states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

...

(c) To have access, on general terms of equality, to public service in his country.¹⁹⁵

This includes access to public funds available for economic development of urban areas and non-discriminatory practices in public aid and opportunities to all citizens.

13.2 Neglect of Duty to Respect the Right to Equality and Non-Discrimination. Panama breached Article 2(1) when it neglected its duty to respect the right to

¹⁹² Ley 41, 1 July 1998, Ley General del Ambiente [General Environmental Statute], G.O. 23578, 3 July 1998 (Pan.).

¹⁹³ Alvarado, *supra* note 182 at 97.

¹⁹⁴ ICCPR at Part I, Art. 1(1).

¹⁹⁵ ICCPR at Part III, Art. 25.

equality and non-discrimination of members of its own indigenous people. This breach violated the essential right to life of indigenous people under Article 6(1). Consequentially, indigenous people cannot fully enjoy their civil and political rights, rights interdependent with their economic, social, and cultural rights under Article 2(2). The breach denies indigenous people effective remedies under Article 2(3), to equal access to public service under Article 25(c), and to equality before the law and equal protection of the laws under Article 26.

Despite having an approximate per capita GDP of US \$9000,¹⁹⁶ placing Panama within the upper-middle income bracket of developing nations, Panamanian indigenous groups experience increasingly high levels of poverty. Although Panama experienced annual GDP growth of approximately 7.8% last year,¹⁹⁷ the results of such economic prosperity have not trickled down to the indigenous population. Within Central and South America, Panama is second only to Brazil regarding inequitable income distribution throughout its population.¹⁹⁸ Approximately 10% of Panama's population is indigenous, but they account for 19.3% of the country's poor and 34.6% of those who live in extreme poverty.¹⁹⁹ While the national poverty rate is 37%, with 17% of the national population living in extreme poverty, 95.4% of indigenous Panamanians live in poverty, and 86.6% live in extreme poverty.²⁰⁰

13.3 Official Strategic Vision Ineffective. Panama developed a national Strategic Vision campaign to annihilate the debilitating effects of poverty. The five objectives of Panama's 2004-2009 Strategic Vision are to: reduce poverty and inequality, promote economic growth and employment, reform public finances and modernize the state, and develop human capital.²⁰¹ However, analysis of the current poverty reduction campaign indicates that little progress has been made. For example, from 1997 to 2007, the overall percentage of indigenous Panamanians living in poverty remained constant at 95.4%, while extreme poverty levels increased from 86.4% to 86.6%.²⁰²

13.4 Lack of Self-Determination Results. Panama's national consumption data reflect Panama's economy more reliably than do income indicators, which fluctuate more with changing economic conditions. Consumption data reflect the expenditures necessary to acquire the minimum number of "essential calories" based on a typical "diet" of the region. Experts use the baseline index since it reflects minimum consumption levels necessary to survive. Panama's Full Poverty Line is .905

¹⁹⁶ Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html> (last visited March 5, 2008).

¹⁹⁷ *Id.*

¹⁹⁸ HUMAN DEV. DEP'T, LATIN AM. AND THE CARIBBEAN REGION, WORLD BANK, PANAMA POVERTY ASSESSMENT 9 (1999), available at <http://go.worldbank.org/H1Q3T60M80> (search for "report 18801"; then follow "Panama Poverty Assessment: priorities and strategies for poverty reduction (English)" hyperlink).

¹⁹⁹ Int'l Fund for Agricultural Dev., *Republic of Panama Country Strategic Opportunities Programme 2-3*, U.N. Doc. EB 2007/91/R.15 (Aug. 14, 2007).

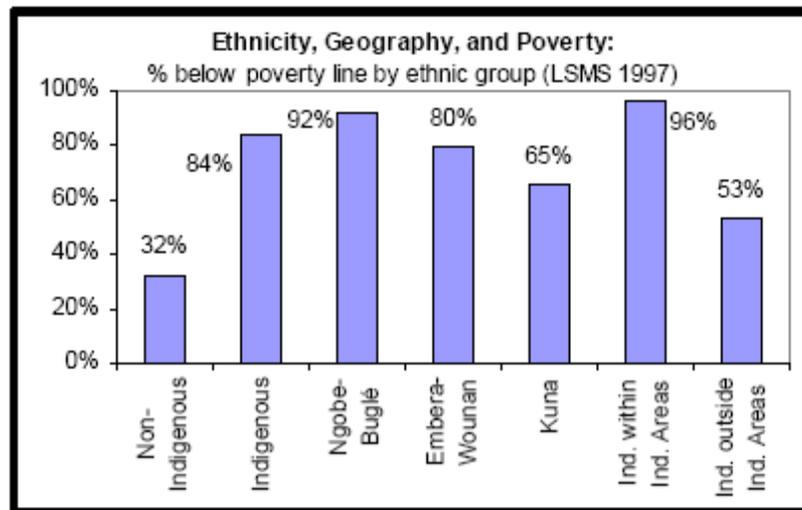
²⁰⁰ *Id.*

²⁰¹ INT'L. BANK FOR RECONSTRUCTION AND DEVELOPMENT, WORLD BANK, COUNTRY PARTNERSHIP STRATEGY FOR THE REPUBLIC OF PANAMA ii (2007), available at <http://go.worldbank.org/H1Q3T60M80> (search for "cps panama"; then follow "Panama – Country Partnership Strategy (English)" hyperlink).

²⁰² For statistics from 1997, see HUMAN DEV. DEP'T, *supra* note 198, at 3; for statistics from 2007, see Int'l Fund for Agricultural Dev., *Republic of Panama Country Strategic Opportunities Programme 3*, U.N. Doc. EB 2007/91/R.15 (Aug. 14, 2007).

Balboas, corresponding to \$.905 USD, which falls below the Global Poverty Line Index of \$1 USD.²⁰³ On average, to reach the poverty line, the poor, indigenous population in Panama would have to more than double their annual consumption.²⁰⁴

The majority of the indigenous population lives within defined indigenous territories, making efforts to revitalize and invigorate the indigenous economy easier due to the well-defined geographical region.²⁰⁵ 96% of the indigenous population living in indigenous territories live in poverty, with 92% of Ngöbe-Buglé and 80% of Emberá-Wounan representing the highest percentages of indigenous people living in poverty (see table below).²⁰⁶



13.5 Discrimination Against Rural Indigenous People’s Negative Impact. Panama has introduced subsidies into the economy to stimulate and invigorate market conditions. However, Panama has not determined a solid course of action with obtainable objectives that will address the indigenous citizens who have settled in rural, isolated settings.²⁰⁷

While members of ethnic indigenous groups may have an entrepreneurial spirit, they may also lack the capital needed to start a business. Moreover, indigenous citizens often lack collateral needed to obtain funds from local banks. For example, the lack of title to property, common among the poor, reduces their ability to obtain credit, as titles are often required as collateral.²⁰⁸ Panama has historically provided social welfare assistance, such as cash transfers, essentially providing an additional source of funds to those requesting it, contingent upon the recipient’s participation in certain

²⁰³ HUMAN DEV. DEPT, *supra* note 198, at 5.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 6.

²⁰⁶ *Id.* at 5.

²⁰⁷ See INT’L. BANK FOR RECONSTRUCTION AND DEVELOPMENT, WORLD BANK, COUNTRY PARTNERSHIP STRATEGY FOR THE REPUBLIC OF PANAMA (2007), available at <http://go.worldbank.org/H1Q3T60M80> (search for “cps panama”; then follow “Panama – Country Partnership Strategy (English)” hyperlink).

²⁰⁸ HUMAN DEV. DEPT, *supra* note 198 at 18.

social programs. For example, the administration of current President Martin Torrijos implements a program that provides stipends of \$35 to mothers of minor children who make sure their children get inoculations and stay in school.²⁰⁹ Cash transfer programs such as this and lower interest rates would enable the indigenous people to become more effective contributors to the Panamanian economy.

14. Steps Panama Must Take to Decrease Economic Disparity Between Indigenous and Non-Indigenous People.

14.1 Pursuant to its duty under Article 2(2) and 2(3), Panama must take concrete steps to ensure economic equality and protect the right of indigenous people to life under Article 6(1). We respectfully suggest the following recommendations:

Recommendation # 19 of 24: The Human Rights Committee urges Panama not only to rigorously develop an economic assessment and gap analysis that will counter the proliferation of current poverty conditions among the indigenous tribes, but also to implement a sound strategy with long-term sustainability, reasonable time-frames, and feasible objectives in order to convert the economy from a financial bureaucracy into one that is more fluid and open-policy driven.

Recommendation # 20 of 24: The Human Rights Committee impresses upon Panama that recognizing the leaders of each indigenous territory as formal representatives for each respective tribe and disseminating information through them will allow the government to convey their policies and plans to the constituents through highly-respected delegates.

Recommendation # 21 of 24: The Human Rights Committee recommends that Panama develop a solid infrastructure, respecting the property rights of the indigenous people, with roadways not only leading to urban, but also to rural communities, enabling indigenous citizens to have adequate access to resources, communication, trade and distribution, knowledge, and human capital.

Recommendation # 22 of 24: The Human Rights Committee recommends that Panama provide reduced interest-rate loans for poverty-stricken indigenous citizens, especially those living in *comarcas*.

Recommendation # 23 of 24: The Human Rights Committee encourages Panama to court direct foreign investments in the extensive capital available in the indigenous communities through tools such as tax incentives (similar to companies investing in the expansion of the Panama Canal) which can be used by the indigenous people to develop their economies.

Recommendation # 24 of 24: The Human Rights Committee encourages Panama to investigate the use of organizations that could connect private investors with indigenous-owned and operated small businesses.

²⁰⁹ Jackson, *supra* note 166.

Conclusion

As a party to the ICCPR, Panama must afford its indigenous people a wide range of civil and political rights. However, Panama has breached the ICCPR by denying indigenous people their right to self-determination (Articles 1 and 2), and by denying them a remedy for this breach. Panama additionally breached the ICCPR by discriminating against, and denying equal protection to its indigenous people in the following five areas: (1) Property Discrimination (breaching Article 1 and Article 18); (2) Education Discrimination (breaching Articles 2 and 27); (3) Denial of the Right to Life through Inadequate Health Care (breaching Articles 6 and 24); (4) Denial of Political Participation and the right to self-determination (breaching Article 25; and (5) Discrimination resulting in Economic Disparity (breaching Article 1).

Panama's indigenous people can only enjoy their civil and political rights if they equally enjoy their complementary economic, social, and cultural rights. Panama violates civil and political rights under ICCPR Articles 2(1), 2(2), 2(3), 26, and 27, by neglecting and refusing to adopt measures to protect the indigenous people's economic, social, and cultural rights, particularly their land rights. By denying indigenous people legal title to their lands, Panama denies them the use of their resources, thereby threatening the preservation of their culture. Panama discriminates against indigenous people in public schools, which operate with little consideration for the special educational needs of indigenous people. The government violates the right to life of indigenous people by failing to provide adequate health care facilities and programs, thus causing higher mortality rates for children, mothers, and the elderly. Panama fails to recognize all indigenous groups through the *comarca* system, thus denying its indigenous citizens their right to political self-determination, violating Articles 1, 25(a), and 27. Panama violates the right to equality and non-discrimination of indigenous people under Article 2(1), bringing about gross economic disparity between indigenous and non-indigenous people. Panama further breaches Articles 2(2), 2(3), 6(1), 25(c), 26, and 27, by neglecting to institute measures to reduce this economic gap.

Panama must ensure that its citizens, including indigenous citizens, enjoy all internationally recognized human rights, such as the civil and political rights protected under the ICCPR. Yet Panama perpetuates a system in which indigenous people suffer much discrimination.

Thus, we respectfully request that the Human Rights Committee conclude that the Panamanian government violated its obligations under ICCPR Articles 1, 2, 6, 18, 24, 25, and 27. We urge the Human Rights Committee to call on the government to adopt and amend its laws, policies, and practices to protect the civil and political rights of its indigenous population. We also urge the Committee to encourage the government to utilize the resources of its indigenous population by accepting their full participation in all stages of policymaking, implementation, and legislative impact assessment. Such changes must be made before indigenous persons in Panama can enjoy the human rights protections established under international law.

Exhibit 1

Affidavit of Elmer Cabezón, Regional Wounaan Congress Indian Chief and Representative

**(English translation follows Spanish original. Translation by Shadow Report
Authors. Original contains Notary stamp, translation does not.)**

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DECLARACION JURADA NOTARIAL

En la ciudad de Panamá, República de Panamá y Cabecera del Circuito Notarial de Panamá, a los veinticinco (25) días del mes de febrero del año dos mil ocho (2,008), ante mi, MARIO VELASQUEZ CHIZMAR, Notario Público Segundo Segundo del Circuito Notarial de Panamá, portador de la cédula de ciudadanía número ocho-ciento setenta y seis-cuatrocientos veintidos (8-176-422), compareció el señor HELMER CABEZON MEPAQUITO varón, panameño, casado, mayor de edad con cédula de identidad personal número cinco-veintidos-novecientos cincuenta y ocho (5-22-958), con domicilio en la Comunidad de Río Hondo, Distrito Chiman, Provincia de Panamá, de paso por esta ciudad, y me solicitó que le recibiera una DECLARACION JURADA.. Accedí a ello, advirtiéndole que la responsabilidad por la veracidad de lo expuesto, es exclusiva de la DECLARANTE. Lo aceptó, y seguidamente expresó hacer esta DECLARACION bajo la gravedad del juramento y sin ningún tipo de apremio o coerción, de manera totalmente voluntaria.- Declaró lo siguiente: -----

- 1. Que soy el Cacique Regional de Panamá Este elegido por el Congreso Regional de la comunidad Wounaan cuyo cacique nacional es Félix Piraza. -----
2. Mi función es velar por la autonomía de los pueblos indígenas, llevar los problemas a las instituciones de gobierno, y presentar proyectos para solucionar los problemas del pueblo Wounaan teniendo en cuenta que lo más importante es la defensa de nuestras tierras. -----
3. Yo puedo interactuar con las autoridades centrales y con las autoridades regionales del gobierno. -----
4. El pueblo Wounaan ha realizado diferentes Congresos y al terminar cada Congreso se emiten resoluciones. La resolución contiene la descripción de nuestros problemas y propuestas de solución a los mismos. Nosotros hemos venido enviando las resoluciones cada año al gobierno para que nos delimite nuestros territorios. Los congresos tienen diferentes objetivos en materia de educación, salud, proyectos para el desarrollo de cada comunidad, etc. Nosotros realizamos un congreso regional cada año y un Congreso Nacional cada dos años. El último Congreso Nacional fue en el 2006. -----
5. En el congreso participan la población en general de la comunidad con sus autoridades tradicionales, que son los caciques y dirigentes de las comunidades, Presidente de la comunidad local y los regidores.-----
6. En los congresos también hemos invitado, al Gobierno Nacional y Regional, al Ministerio de Gobierno y Justicia, especialmente a la Dirección Nacional de Política indigenista que pertenece al mismo, ala Defensoría del Pueblo, a la Autoridad Nacional del Ambiente, (ANAM), y la Entidad de Reforma Agraria, Comisiones de Límites de Legalización de Tierras que pertenece igualmente al Ministerio de Gobierno y

Affidavit of Elmer Cabezon.

In Panama City, the Republic of Panama and the head notary circuit of Panama on February 25, 2008, before me, Mario Velasquez Chizmar, notary public in the second notary circuit, carrier of the citizen ID number 8-176-422, appeared Mr. Helmer Cabezon Mepaquito, adult, male, Panamanian, married with the personal ID number of 5-22-958, with domicile in the Río Hondo community, Chiman District, Panama Province, and requested that I receive an affidavit. I agreed, warning him that the truth of the affidavit is the sole responsibility of the affiant. He accepted it and expressed his desire to make this affidavit under penalty of perjury and without any type of duress or coercion in a totally voluntary manner. He declared the following-----

1 - That I am the regional Indian Chief of East Panama chosen by the Regional Congress of the Wounaan community, whose National Chief is Felix Piraza.

2 - My function is to preserve the autonomy of the indigenous people, and make known the plights of the indigenous people to the government and likewise plan and present projects and solutions to solve the numerous problems concerning the Wounaan people taking into account that the most important issue is to defend our land.

3 - Furthermore I am able to interact with the central authorities and federal authorities.

4 - The Wounaan people have organized different congresses which usually end with a decree. This decree contains a description of our problems and makes a proposal to solve those problems. Each of the resolutions or decrees is sent to the government asking for clear demarcation landmarks of our region. The congress has different objectives, such as health issues, education, development for the community, etc. We organize our Regional Congress each year and our National Congress every two years. The last National Congress was held in 2006.

5 - The representatives in the congress consist of the cacique, (Indian Chief), the president from the local community (mayor), and the Regidor (Indian Chief).

6 - We have invited to congresses the national and regional governments, the Minister of Government and Justice, the National Department of Indigenous People, the Minister of Environment, the Institute of Agrarian Reform, the Commission of Landmarks and Legalization of Land, the Minister of Social Development (mides), the Minister of Education, the Minister of Health, the Government Program of Land Titles, the Electoral Tribunal, the National Police, amongst other organizations.

7 - The government entities do not attend the congresses in a regular fashion. Those that do attend do not make decisions on any matters.

8 - At the last Regional Congress of East Panama on January 2007, in Platanares, which is in the Chiman District, Panama Province none of the government officials attended.

9 - As a product of that Congress we adopted a decree that was sent to all the mentioned government institutions that did not attend. But we have never obtained any response or official statement from the government.

10 - The only thing the government has done was to enact an agreement about the conflicts between the settlers and indigenous people that took place in 2004. The minister of Government and Justice was the mediator. This agreement did not arise from the Congress nor the recommendations that we insistently make at the congresses, but rather arose out of violent confrontations between the indigenous and settlers. Currently, the settlers do not comply with this agreement.

Since then all of our congresses have requested from the government the compliance of the signed agreements. All this was done without responding to our congressional resolutions or any other petition. There has never been a response to our petition on land, although we have always invited government institutions to discuss this problem. This is only an example of what is occurring in our regions. This phenomenon is repeated throughout the country with the Wounaan people.

As proof he signs this affidavit before me, the notary.

The affiant,

Helmer Cabezon Mepaquito
ID No. 5-22-958

Exhibit 2

Current Wounaan Regional Congress Resolutions

(English translation follows Spanish original. Translation by Shadow Report Authors. Original contains government stamp verifying receipt, translation does not.)

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Maje, 18 de enero de 2008

El congreso regional wounaan, celebrado en maje los días 17 y 18 de enero de 2008

Resolución # 1

El congreso, en uso de sus facultades consuetudinario, reitera al gobierno una vez más sobre la violación de los acuerdos pactados y los daños ecológicos dentro de las tierras ocupadas por los wounaan.

Considerando

- 1- Que el Congreso Regional, como nuestra máxima expresión y liderazgo de los pueblo wounaan; pone de manifiesto que el gobierno tiene poca voluntad para resolver los problema que se agravan cada día más, entre indígenas y colonos por la tenencia de tierra.
- 2- Que en el 2005, se firmaron tres acuerdos entre indígenas, colonos y gobierno, con la finalidad de poner en alto, la destrucción masiva de bosques vírgenes ocupadas por los wounaan; y este acuerdo fue violado y hasta el sol de hoy, siguen los colonos destruyendo nuestras montañas vírgenes, causando así problema de escasez de agua en los río, quebrada, las fauna y flora (destruyendo nuestras plantas medicinales).
- 3 - Que la Autoridad Nacional del Ambiente (ANAM), cuentan con ley que sancionan a las personas, grupos o empresa que causan daños ecológicos y esta ley no han servido para nada en nuestra población. El gobierno ha hecho caso omiso, a los daños ecológicos que causan por los campesinos dentro de las tierras ocupada ancestralmente
- 4- que posterior acuerdo entere gobiernos locales, los señores: Sirilo Sirez, Teofilo Benite Y Nariño Samudio, han expandido y vendido sus tierra a otra persona dentro de la tierra de la comunidad de maje- chiman, la cual no es permitible.
- 5- que los wounaan por costumbre ancestrales, han conservado su identidad cultural la conservación de las tierras, animales silvestres, montañas vírgenes, abundantes aguas en los ríos, quebradas que hacen posible la supervivencia del grupo étnico. Por lo expuesto en los articulos anteriores a causado amenazas de nuestros líderes y moradores, tanto hombres y mujeres por los colonos, quitando así cada año parte de nuestras tierras y estos nos causan exponer cada día nuestra vida a un enfrentamiento sangriento.

Resuelve:

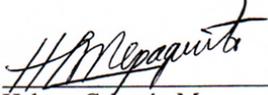
- 1- El Congreso, sugiere y hace un llamado a S.E. Daniel Delgado Diamante, Ministro de Gobierno y Justicia, para que atienda nuestros problemas, que nos den respuesta de aliento; que sancionen, o un desalojo total de los colonos que se encuentran destruyendo nuestros bosques primarios, ya que dichos campesinos nos amenazan de muerte,

destruyen los animales silvestres contaminan y secan las aguas de los ríos, quebradas y riachuelo con los siembros de pastos en ambos orillas de los ríos.

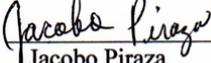
2- De igual forma, el congreso sugiere no más engaños, no cuarten nuestro derecho consuetudinario, que no nos traten como objeto de explotación; ya fuimos explotados, privados de nuestro derecho y no queremos pasar por estas amargas y sin sabores sufrimiento por defender el derecho de nuestro futuro. Tierra donde nuestros hijos, nietos y bisnietos puedan cultivar.

Solo queremos que el gobierno nos delimiten nuestras tierras a través de decreto ejecutivo o constitución nacional, donde nos acredite y garantice el usufructo de nuestras tierras y amparada por ley del Estado.

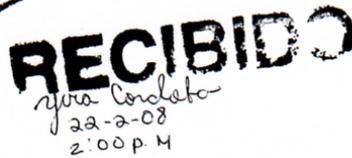
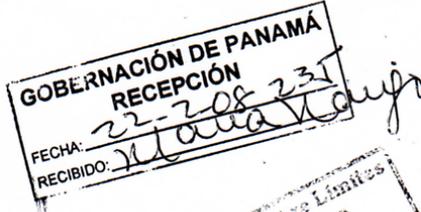
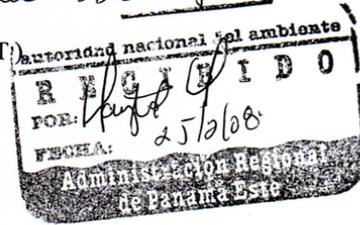
Dado en la comunidad de majé, a los 17 días del mes de enero de 2008


Helmer Cabezon M
Cacique Regional Wounaan

Comuníquese y publíquese

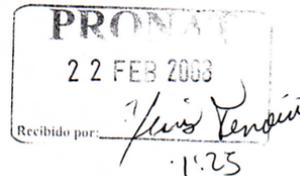

Jacobo Piraza
Pte del Congreso Regional Wounaan

- C.C.- Dirección Nacional de Política Indigenista
- Gobernación
 - Defensor del Pueblo
 - Autoridad Nacional del Ambiente (ANAM)
 - Dirección Nacional de Reforma Agraria (DINRA)
 - Programa Nacional de titulación de tierra (PRONAT)
 - Comisión de Limites
 - Alcalde del distrito de Chimán
 - Ministerio de Desarrollo Social (MIDES)



MINISTERIO DE GOBIERNO Y JUSTICIA
DIRECCION DE POLITICA INDIGENISTA

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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District-East Panama District
Tel: 6634-6951 and 6585-2743/296-8838

Maje, January 18, 2008

The Regional Wounaan Congress, celebrated in Maje on the 17th and 18th of January 2008.

Resolution #1

The Congress reiterates to the government one more time the violations of the agreements and the ecological damage of the land occupied by the Wounaan.

Considering

- 1 - That the Regional Congress, as our maximum expression and leadership of the Wounaan, recognizes that the government has little will to resolve the problems that worsen every day between the indigenous and settlers because of land possession.
- 2 - That in 2005, three agreements were signed between the indigenous people, the settlers, and the government with the objective of putting an end to massive destruction of virgin forests occupied by the Wounaan; and this agreement was violated and still today the settlers continue to destroy our virgin mountains, causing problems of scarcity of water in the rivers and destroying the flora and fauna (destroying our medicinal plants).
- 3 - That the National Environmental Authority has a law that sanctions people, groups, or businesses that cause ecological damage and this law has been useless to our community. The government has done nothing with respect to the ecological damages that the peasants cause on our ancestral land.
- 4 - That according to a previous agreement between the local governments, Mr. Sirilo Sirez, Mr. Teofilo Benite, and Mr. Nariño Samudio have expanded and sold their lands to other people inside of the land of the Maje-Chiman community, which is not permitted.
- 5 - That the Wounaan, because of ancestral customs, have conserved their cultural identity, the conservation of the land, animals, virgin forests, and abundant water in the rivers, which has made possible the survival of the Wounaan. The facts in the previous articles have caused threats to our leaders and inhabitants, men as well as women, by the settlers taking away each day part of our lands and this causes us each day to risk our life in a bloody confrontation.

Resolved

1 - The Congress suggests and calls Daniel Delgado Diamante, Minister of Government and Justice, to attend to our problems, sanction or totally evict the settlers that are destroying our forests, since these settlers threaten us with death, destroy animals, and contaminate and dry up the water in the rivers.

2 - Additionally, the Congress suggests no more deceits and no more treating us as objects of exploitation; we were already exploited, deprived of our lands and we do not want to pass through this bitter suffering to defend the right to our future or our land where our children, grandchildren, and great-grandchildren can grow.

We only want the government to mark off our lands by an executive decree or by national constitution that guarantee us the use of our lands protected by state law.

Given in the Maje community on January 17, 2008

Helmer Cabezon M
Regional Wounaan Chief

Jacobo Piraza
Member of the Wounaan Regional Congress

Sent to:-National Board on Indigenous Policy

- Government
- Ombudsman
- National Environmental Authority
- National Board on Agrarian Reform
- National Program on Land Title
- Limits Commission
- Chiman District Mayor
- Social Development Minister

REPÚBLICA DE PANAMÁ
WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman – Región de Panamá Este
Tel: 6634-6951 y 6585-2743/296-8838

El congreso regional wounaan, celebrado en maje los días 17 y 18 de enero de 2008

Resolución # 2

El congreso wounaan, en uso de sus facultades consuetudinario, expone los problema de escasez de medicamento, como también de lancha rápida en los puesto de salud de la población.

Considerando

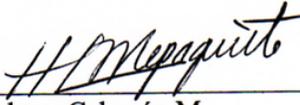
- 1- Que en los últimos dos años, los puestos de salud de Río Hondo y majé presentan escasez de medicamento de primera necesidad. Los asistente medico que laboran no pueden atender a paciente con enfermedad de granos, roncheras, diarrea, dolores de cabezas, muelas, fiebre, inyectable contra infecciones, anestesia para suturas, entre otros, debido a falta de medicamento y herramienta médica de primera necesidad.
- 2- Que en la comunidad de platanares, urge la edificación de un puesto de salud, para subsanar las múltiples necesidades de salud en los moradores, tomando en cuenta el difícil acceso el área en caso de urgencia. Cabe mencionar que la comunidad tiene un joven tomando curso de asistente médico en el centro de salud de las margaritas – Chepo.
- 3- Así como los centro de salud urbanos cuentan con sus propias flotas de transporte para paciente en caso de urgencia. Nuestro puestos de salud con mayor razón, se necesita lanchas rápidas fibra de vidrio con sus respectivo motor fuera de borda con la finalidad de dar respuesta a paciente en caso de urgencia, ya que son áreas vulnerables a enfermedades y de difícil acceso.

Resuelve:

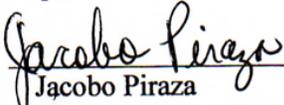
- 1- El congreso wounaan, sugiere a la doctora, Ivonne Villarreal, directora regional del sistema de salud, Panamá Este, el suministro de medicamento de primera necesidad en los puestos de salud de Río Hondo, Majé y Platanares. Así como de dar respuestas a las necesidades expuesta en los párrafos anteriores, 1 y 2 de este documento
- 2- De igual forma, sugerimos de urgencia notoria, lancha rápida fibra de vidrio con su respectivo motor fuera de borda para el puesto de salud de Río Hondo, Majé, y Platanares. Ya que para el 24 de diciembre de 2007 y 27 de enero de 2008 trajeron pacientes graves desde Río Hondo hacia el Hospital Regional de Chepo

Dado en la comunidad de Majé, a los 17 días del mes de enero de 2008

Comuníquese y publíquese

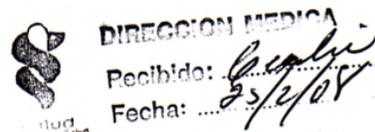


Helmer Cabezón M
Cacique Regional Wounaan



Jacobo Piraza
Pte del Congreso Regional Wounaan

C.C. - Gobernación
- Director Nacional de Política Indigenista



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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District-East Panama District
Tel: 6634-6951 and 6585-2743/296-8838

The Regional Wounaan Congress, celebrated in Maje on the 17th and 18th of January 2008.
Resolution #2

The Wounaan Congress exposes the problems of the scarcity of medicines and a speedboat in the health post of the community.

Considering

- 1 - That in the last two years, the health posts at Río Hondo and Majé have experienced a scarcity of medicines. The medical assistants that work cannot attend to patients with headaches, toothaches, diarrhea, fever, injections against infections, as well as others due to lack of medicines and medical tools.
- 2 - That in the Platanares community a health post is necessary in order to care for the health needs of the inhabitants, taking into account the difficult access to the area in case of emergency. Also, the community has a youth taking courses in medical assistance in the health center of Margaritas-Chepo.
- 3 - Also, the urban health centers have their own transportation floats for patients in case of emergency. Our health posts need fiberglass speedboats in order to respond to patients in emergencies, since the Wounaan live in areas vulnerable to sicknesses and of difficult access.

Resolved

- 1 - The Wounaan Congress urges Doctor Ivonne Villarreal, Regional Director of the Health System of East Panama, the Sub-minister of Medicines of first necessity in the health posts of Río Hondo, Majé, and Platanares to respond to the needs stated in paragraphs 1 and 2 of this document.
- 2 - Additionally, we request a fiberglass speedboat for the health posts in Río Hondo, Majé, and Platanares.

Given in the Majé community on January 17, 2008.

Helmer Cabezón M
Regional Wounaan Chief

Jacobo Piraza
Member of the Wounaan Regional Congress

Sent to: Government
-National Director of Indigenous Policy

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REPÚBLICA DE PANAMÁ
WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman – Región de Panamá Este
Tel: 6634-6951 y 6585-2743/296-8838

Maje, 18 de enero de 2008

Resolución # 3

El congreso en uso de sus facultades consuetudinario; se promueve la educación pre-media multigrado y la construcción de aula para los mismos

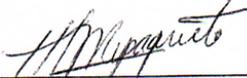
Considerando:

- 1- Que por limitaciones económicas nuestros niños (as) no tienen acceso a cursar a un séptimo grado en los centro básicos urbanos; por lo que hay una gran preocupación de nuestro lideres, debido que los (as) estudiantes egresan de sexto grado y no cursan a los siguiente grado; ninguno aspiran a obtener certificado de noveno grado.
- 2- Que en la comunidad de Majé- se inició la educación Pre- media en 2007; la cual no cuentan con aula de clase propios. De igual forma, la escuela de Río Hondo se proyecta dicho programa en este año 2008. El arquitecto Oro del MEDUCA, fue a medir el terreno en noviembre de 2007, lugar donde se construirá el aula de clase, y aun no hay expectativa nuevas por parte del MEDUCA
- 3- Para nuestra población, el implemento de una educación pre- media en las comunidades, es una esperanza para los jóvenes del presente y del futuro; de tal manera que conlleva a una cultura educativa, reflexivo crítico y analítico en los problemas que presentan en la vida diaria. Además es un reto para los padres y madre de familia para con sus hijos y el compromiso de responsabilidad para llevar a cabo con eficiencia integral, la administración del centro educativo.

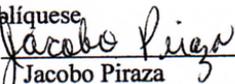
Resuelve:

- 1- Tomando en cuenta los artículos anteriores, el congreso sugiere al ministro de educación ; Dr, Belgis Castro, el nombramiento de un (una) profesor (a) de enseñanza pre-media multigrados en las escuelas de Río Hondo y Majé, de igual forma la construcción de aula y equiparación de los centros básicos de las comunidades en mención.
- 2 – nosotros como líderes, estamos con el total acuerdo de apoyar a los docente que laboran en nuestras comunidades, como siempre lo hemos hecho. De igual forma; los padres y madres de familia estamos muy de acuerdo de poner mano de obra no especializada en dicha construcción, si así fuese posible.

Dado en la comunidad de majé, a los 17 días del mes de enero de 2008



Helmer Cabezon M
Cacique Regional Wounaan

Comuníquese y Publíquese,


Jacobo Piraza
Pte del Congreso Regional Wounaan

C.C. Dirección Regional de Educación Panamá Este, Chepo

Manoel Alvarez
22/2/08
10:10 am

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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District-East Panama District
Tel: 6634-6951 and 6585-2743/296-8838

Maje, January 18, 2008

Resolution #3

That the Congress promotes intermediate education and request construction of a classroom for this education.

Considering

1 - That because of the economic limitations our children do not have access to the 7th grade in the basic urban centers for which there is a great worry of our leaders due to the fact that students that pass the 6th grade cannot study 7th grade material, thus none aspire to obtain 9th grade certification.

2 - That the Majé community started intermediate education in 2007, which does not have its own classroom. Additionally, the school in Río Hondo projects to have a 7th grade in 2008. The architect from MEDUCA went to measure the land where they are to build the classroom in November 2007 and there are still no other new expectations on the part of MEDUCA.

3 - For our population, the implementation of intermediate education in the communities is a hope for the children of the present and future; it brings an educated culture and critical analysis to the problems that they face in their daily lives. Additionally, it is a challenge for the parents and a commitment to the responsibility of carrying out with efficiency the administration of an education center.

Resolved

1 - Taking into account the previous articles, the congress requests the Minister of Education, Doctor Belgis Castro, to name an intermediate professor for the schools in Río Hondo and Majé and request the construction of a classroom and the equipping of centers in the mentioned communities.

2 - We as leaders are in total agreement in supporting the students in our community as we always have. The parents are in agreement to help in the construction.

Given in the Majé community on January 17, 2008.

Helmer Cabezón M

Jacobo Piraza

Regional Wounaan Chief

Member of the Wounaan Regional Congress

Sent to:-Regional Board of Education of East Panama, Chepo

Exhibit 3

Letters from Wounaan Congress To Government Officials

(English translation follows Spanish original. Translation by Shadow Report Authors. Original contains government stamp verifying receipt, translation does not.)

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REPÚBLICA DE PANAMÁ

WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman
TEL: 6634-6951 y 6585-2743/296-8838

Río Hondo, 18 de diciembre de 2007

Magíster:
Armando Escarreola
Director Regional de
Educación de Panamá Este – Chepo

E. S. D.

Distinguido Director, Escarreola

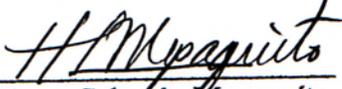
Es para dirigirle nuestro saludo fraternal, deseándole dichas y bendiciones en éstas fiestas de fin de año.

La misma tiene como objetivo, extenderle una cordial invitación a nuestro Congreso Regional, que se celebrará los días 17 y 18 de enero de 2008, en la comunidad de Maje-Chiman.

Se tratará temas como; los problemas de invasión de tierra y los acuerdos acordada entre colonos e indígenas y entidades correspondientes, Educación, Salud, entre otros puntos.

Sin más otra en excepción; reiterando nuestro saludo inicial, de Usted

Atte:


Helmer Cabezon Mepaquito
Cacique Regional Wounaan


Leonides Quiroz
Voceros del Pueblo Wounaan



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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District
Tel: 6634-6951 and 6585-2743/296-8838

Río Hondo, December 18, 2007

Armando Escarreola
Regional Director of Education in East Panama-Chepo

Dear Director:

We write to extend to you a fraternal greeting and we wish you happiness and blessings during this holiday season.

Also, we wish to extend a cordial invitation to you to our Regional Congress, which will be celebrated the 17th and 18th of January 2008 in the community of Majé-Chiman.

We will discuss topics like the invasion of land problem and the agreements between the settlers, indigenous, and the education and health agencies; as well as other topics.

Attentively:

Helmer Cabezon Mepaquito
Cacique Regional Wounaan

Leonides Quiroz
Spokesman of the Wounaan

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REPÚBLICA DE PANAMÁ

WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman
TEL: 6634-6951 y 6585-2743/296-8838

Río Hondo, 18 de diciembre de 2007

A quien concierne
Director Regional de la Autoridad Nacional del
Ambiente ANAM de Panamá Este -Chepo

E. S. D.

Distinguido Director:

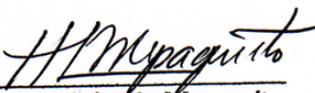
Es para dirigirle nuestro saludo fraternal, deseándole dichas y bendiciones en éstas fiestas de fin de año.

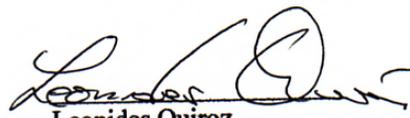
La misma tiene como objetivo, extenderle una cordial invitación a nuestro Congreso Regional, que se celebrará los días 17 y 18 de enero de 2008, en la comunidad de Maje-chiman.

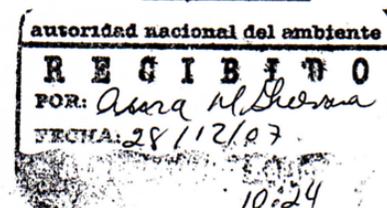
Se trataran temas como; los problemas de invasión de tierra y los acuerdos acordada entre colonos e indígenas y entidades competentes, Educación, Salud, Ambiente, entre otros puntos como: puesto de vigilancia policial en Río Hondo.

Sin más otra en excepción; reiterando nuestro saludo inicial, de Usted

Atte:


Helmer Cabezón Mepaquito
Cacique Regional Wounaan


Leonides Quiroz
Voceros del Pueblo Wounaan



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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District
Tel: 6634-6951 and 6585-2743/296-8838

Río Hondo, December 18, 2007

To Whom It May Concern
Regional Director of the National Environmental Authority of East Panama-Chepo

Dear Director:

We write to extend to you a fraternal greeting and we wish you happiness and blessings during this holiday season.

Also, we wish to extend a cordial invitation to you to our Regional Congress, which will be celebrated the 17th and 18th of January 2008 in the community of Majé-Chiman.

We will discuss topics like the invasion of land problem and the agreements between the settlers, indigenous, and the education, health, and environmental agencies, as well as the police post in Río Hondo.

Attentively:

Helmer Cabezon Mepaquito
Cacique Regional Wounaan

Leonides Quiroz
Spokesman of the Wounaan

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REPÚBLICA DE PANAMÁ

WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Majé, Río Hondo y Platanares
Distrito de chiman
TEL: 6634-6951 y 6585-2743/296-8838

Río Hondo, 18 de diciembre de 2007

Lic. Ricardo Vargas
Defensor del Pueblo

E. S. D.

Distinguido Defensor:

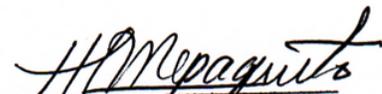
Es para dirigirle nuestro saludo fraternal, deseándole dichas y bendiciones en éstas fiestas de fin de año.

La misma tiene como objetivo, extenderle una cordial invitación a nuestro Congreso Regional, que se celebrará los día 17 y 18 de enero de 2008, en la comunidad de Majé-chiman.

Se tratara temas como; los problemas de invasión de tierra y los acuerdos acordada entre colonos e indígenas y entidades correspondientes, Educación, Salud, entre otros puntos como: puesto de vigilancia policial en Río Hondo y la Secta Religiosa.

Sin más otra en excepción; reiterando nuestro saludo inicial, de Usted

Atte:


Helmer Cabezón Mepaquito
Cacique Regional Wounaan


Leonides Quiroz
Voceros del Pueblo Wounaan

2007 DEC 20 AM 10:44

Jana

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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District
Tel: 6634-6951 and 6585-2743/296-8838

Río Hondo, December 18, 2007

Ricardo Vargas
Ombudsman

Dear Ombudsman:

We write to extend to you a fraternal greeting and we wish you happiness and blessings during this holiday season.

Also, we wish to extend a cordial invitation to you to our Regional Congress, which will be celebrated the 17th and 18th of January 2008 in the community of Majé-Chiman.

We will discuss topics like the invasion of land problem and the agreements between the settlers, indigenous, and the education and health agencies, as well as the police post in Río Hondo and the religious sects.

Attentively:

Helmer Cabezon Mepaquito
Cacique Regional Wounaan

Leonides Quiroz
Spokesman of the Wounaan

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REPÚBLICA DE PANAMÁ

WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Majé, Río Hondo y Platanares
Distrito de chiman
TEL: 6634-6951 y 6585-2743/296-8838

Río Hondo, 18 de diciembre de 2007

Lic. Severino Mejía.
Viceministro de Gobierno y Justicia:

E. S. D.

Distinguido Viceministro, Mejía:

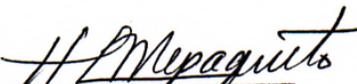
Es para dirigirle nuestro saludo fraternal, deseándole dichas y bendiciones en éstas fiestas de fin de año.

La misma tiene como objetivo, extenderle una cordial invitación a nuestro Congreso Regional, que se celebrará los días 17 y 18 de enero de 2008, en la comunidad de Majé-chiman.

Se tratará temas como; los problemas de invasión de tierra y los acuerdos acordada entre colonos e indígenas y entidades correspondientes, Educación, Salud, entre otros puntos como: puesto de vigilancia policial en Río Hondo y la secta religiosa.

Sin más otra en excepción; reiterando nuestro saludo inicial, de Usted

Atte:


Helmer Cabezón Mepaquito
Cacique Regional Wounaan


Leonides Quiroz
Voceros del Pueblo Wounaan



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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District
Tel: 6634-6951 and 6585-2743/296-8838

Río Hondo, December 18, 2007

Severino Majia
Government and Justice Vice Minister

Dear Vice Minister Mejia:

We write to extend to you a fraternal greeting and we wish you happiness and blessings during this holiday season.

Also, we wish to extend a cordial invitation to you to our Regional Congress, which will be celebrated the 17th and 18th of January 2008 in the community of Majé-Chiman.

We will discuss topics like the invasion of land problem and the agreements between the settlers, indigenous, and the education and health agencies, as well as the police post in Río Hondo and the religious sects.

Attentively:

Helmer Cabezón Mepaquito
Cacique Regional Wounaan

Leonides Quiroz
Spokesman of the Wounaan

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REPÚBLICA DE PANAMÁ

WOUNAAN PÖDPA NAM PÖMAAM GARM

Congreso regional Wounaan

Maje, Río Hondo y platanares

Distrito de chiman

TEL: 6634-6951 y 6585-2743/296-8838

Río Hondo, 18 de diciembre de 2007

Lic. Yarisel Rodríguez.
Directora Regional del Ministerio de
Desarrollo Social MIDES, Panamá Este- Chepo.

E. S. D.

Distinguida Directora, Rodríguez:

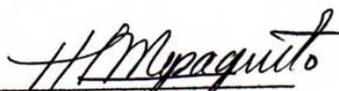
Es para dirigirle nuestro saludo fraternal, deseándole dichas y bendiciones en éstas fiestas de fin de año.

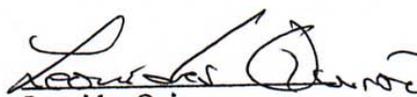
La misma tiene como objetivo, extenderle una cordial invitación a nuestro Congreso Regional, que se celebrará los día 17 y 18 de enero de 2008, en la comunidad de Maje-chiman.

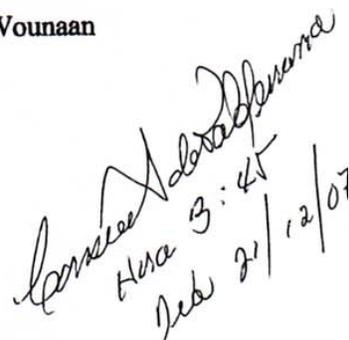
Se tratara temas como; los problemas de invasión de tierra y los acuerdos acordada entre colonos e indígenas y entidades correspondientes, Educación, Salud, entre otros puntos como: puesto de vigilancia policial en Río Hondo y la Secta Religiosa en dicha comunidad.

Sin más otra en excepción; reiterando nuestro saludo inicial, de Usted.

Atte:


Helmer Cabezón Mepaquito
Cacique Regional Wounaan


Leonides Quiroz
Voceros del Pueblo Wounaan


Hora 3:45
Día 21/12/07

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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District
Tel: 6634-6951 and 6585-2743/296-8838

Río Hondo, December 18, 2007

Yarisel Rodriguez
Regional Director of Minister of Social Development, East Panama-Chepo

Dear Director:

We write to extend to you a fraternal greeting and we wish you happiness and blessings during this holiday season.

Also, we wish to extend a cordial invitation to you to our Regional Congress, which will be celebrated the 17th and 18th of January 2008 in the community of Majé-Chiman.

We will discuss topics like the invasion of land problem and the agreements between the settlers, indigenous, and the education and health agencies; as well as the police post in Río Hondo and the religious sects.

Attentively:

Helmer Cabezon Mepaquito
Cacique Regional Wounaan

Leonides Quiroz
Spokesman of the Wounaan

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| | |
|--|--|
|  Defensoría del Pueblo REPUBLICA DE PANAMÁ | DEFENSORIA DEL PUEBLO DE LA REPUBLICA DE PANAMA |
| | Recibido Por: <u>Jna</u> |
| | Fecha: <u>22/12/08</u> Hora: <u>11:38</u> |

REPÚBLICA DE PANAMÁ
WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman – Región de Panamá Este
Tel: 6634-6951 y 6585-2743/296-8838

Maje, 18 de enero de 2008

Lic. Ricardo Vargas
Defensor del Pueblo
Ciudad Panamá

E. S. D.

Distinguido Señor Vargas:

En nombre del Congreso Regional les deseamos que el Dios todopoderoso ilumine su labor que desempeña cada día

La misma tiene como objetivo, hacerle de su conocimiento que nuestro Congreso Regional Wounaan, se le extendió una invitación formal a los siguiente instituciones: Gobierno y Justicia, Dirección Nacional de Política Indigenista, Defensoría del Pueblo MIDES, ANAM, SALUD Y MEDUCA en la región de panamá este, las cuales ninguna de las instituciones mencionadas se presentaron en el evento realizada, los día 17,18 de enero 2008

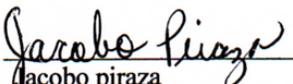
Por lo tanto el Congreso Regional, califica como falta de voluntad de ejercer sus obligaciones como funcionario del Estado y el compromiso de atender los problemas indígenas. Que se avanza rápidamente llevando así a un final que posiblemente pueda terminar en un enfrentamiento sangriento entre campesinos e indígenas.

Agradecemos la atención prestada, de Usted

Atentamente:



Helmer Cabezón M
Cacique Regional Wounaan



Jacobo Piraza
Pte del Congreso Regional Wounaan

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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and platanares
Chiman District-East Panama Region
Tel: 6634-6951 and 6585-2743/296-8838

Maje, January 18, 2008

Ricardo Vargas
Ombudsman
Panama City

Dear Mr. Vargas:

In the name of the Regional Congress, we desire that almighty God illuminate the work that you perform each day.

Also, we would like to inform you of our Regional Congress and of the formal invitation made to the following institutions: Government and Justice, National Board of Indigenous Policy, Defensoría del Pueblo, MIDES, ANAM, SALUD and MEDUCA in the East Panama Region, none of which came to the Congress that took place on the 17th and 18th of January 2008.

As a result, the Regional Congress has noted the lack of will on the part of these government officials to exercise their obligations as officials of the state and their lack of commitment to attending to the problems of the indigenous. This is quickly leading to an end that could possibly be a bloody confrontation between peasants and indigenous.

Attentively,

Helmer Cabezon M
Cacique Regional Wounaan

Jacobo Piraza
Party of the Regional Wounaan Congress

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REPÚBLICA DE PANAMÁ
WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman – Región de Panamá Este
Tel: 6634-6951 y 6585-2743/296-8838

Maje, 18 de enero de 2008

S.E. Daniel Delgado Diamante
Ministro de Gobierno y Justicia
Ciudad de Panamá

E. S. D.

Distinguido Ministro, Diamante;

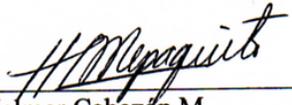
Reciba nuestro saludo fraternal deseándoles éxitos en las labores que tan dignamente desempeña.

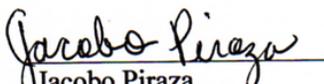
La misma tiene como objetivo, sugerirles una vez más, la construcción de un cuartel de policía ambiental y ANAM, en la comunidad de Río Hondo.

En 2006 hubo una gira interinstitucional conformada por política indigenista, comisión de límites, PRONAT, ANAM y policía; con la finalidad de medir trochas o polígonos de tierra entre Río Hondo y Platanares quienes nos afirmaron una suma de 34.00.00, para la construcción de dicha institución, con la finalidad de controlar la destrucción masiva de las montañas vírgenes, faunas y sequías de agua en los ríos y riachuelos. En verano de 2007, se presentaron unos arquitectos a medir el terreno, lugar de la edificación.

Actualmente se ha visto ningún avance del proyecto; por lo que nos preocupa el atraso de la construcción por un lado y por el otro lado; siguen los campesinos colonos haciendo fiesta con las montañas o bosques primarios en la cabecera de Río Hondo, Platanares y Majé.

Agradeciendo por su atención y esperamos contar con sus respuestas


Helmer Cabezon M
Cacique Regional Wounaan


Jacobo Piraza
Pte del Congreso Regional Wounaan

- C.C. - POLITICA INDIGENISTA
- PRONAT
- ANAM - Chepo
- POLICIA NACIONAL – Chepo.



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REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District-East Panama District
Tel: 6634-6951 and 6585-2743/296-8838

Maje, January 18, 2008

Daniel Delgado Diamante
Minister of Government and Justice
Panama City

Dear Minister Diamante,

Receive our fraternal greeting wishing you success in the work that you do.

We urge one more time the construction of an environmental police headquarters and ANAM headquarters in the Río Hondo community.

In 2006 there was a inter-institutional tour comprised of Indigenous Policy, Commission on Limits, PRONAT, ANAM, and the police with the object of measuring trails and zones of land between Río Hondo and Platanares which affirmed us a sum of 340,000 for the construction of the headquarters in order to control the massive destruction of virgin mountains, fauna, and rivers. In the summer of 2007, some architects came to the community to measure the land where they were going to build.

As of today, we have seen no advances on this project. We are worried due to the delay in construction and due to the settlers having a party in the mountains and primary forests in Río Hondo, Platanares, and Majé.

Thanks for your attention and we await your response.

Helmer Cabezón M
Regional Wounaan Chief

Jacobo Piraza
Member of the Wounaan Regional Congress

Sent to:

- Indigenous Policy
- PRONAT
- ANAM-Chepo
- National Police-Chepo

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REPÚBLICA DE PANAMÁ
WOUNAAN PÖDPA NAM PÖMAAM GARM
Congreso regional Wounaan
Maje, Río Hondo y platanares
Distrito de chiman – Región de Panamá Este
Tel: 6634-6951 y 6585-2743/296-8838

Maje, 18 de enero de 2008

Lic. Gladis Bandiera
Gobernadora de la Provincia de Panamá

E. S. D.

Distinguida Gobernadora Bandiera;

Nuestro saludo fraternal, deseándoles dichas y prosperidad en las labores que emprenda. La misma tiene como objetivo, reiterar las prácticas negativas de la Iglesia Evangélica de la Misión Israelita de Nuevo Pacto Universal; que afectan a la población de Río Hondo. Por decir algunos:

- Durante el año celebran tres fiesta de 8 día seguidos, durante la fiesta sacrifican un plural numero de chivos, hacen bautizo con sangre de los animales sacrificadas, tanto hombres, mujeres y niños ayunan y no duermen ni envían a los niños (as) a la escuela durante estos días de ayuno.
- En cada luna nueva celebran fiesta de 24 horas y no envían a los niños a la escuela.
- En cada sábado celebran fiesta de 24 horas e inculcan los pastores a sus congregados a trabajar los domingos como día laborable y no como día de descansos.
- El pastor se hace pasar como la encarnación de Dios y sus seguidores (as) alaban como un Dios de carne y hueso que está con ellos en la tierra, y el que creó en él irá al cielo de carne y hueso durante el juicio final.
- Estos misioneros obligan a su seguidores (indígenas del lugar) a hombres, mujeres y niños a despojar de sus costumbres, creencias, religiosas, ignoran las organizaciones de la población así como las leyes del gobierno.
- Los pastores asesoran como un medio de herramienta, que si lo despojan del lugar, venderán parte de la tierra pobladas por más de 6 décadas.

Motivo por el cuál, el congreso sugiere a las entidades correspondiente que tomen carta en el asunto de urgencia notoria; ya que estos misioneros que se pasan por Dioses sean investigados y sancionados por falta de respeto, ignorancia a nuestros líderes, explotación indígenas a adultos y niños que tan vulnerables y por sus falta de lecto-escritura. Además observamos un gran interés personal, aprovechando con los diezmos..., de estos pobres indígena que consiguen su dinero después de tantos esfuerzo y además se piensan vender las tierras pobladas por más de 6 décadas hemos conservados con tantos esfuerzo, tiempo, dinero...no es justo que estos grupos religiosos desconocidas extranjeros, nos privan de nuestro derecho.

Si el gobierno no resuelve estos problema, estamos expuestos a defender nuestro derecho, hasta darnos nuestra vida si es posible.

Rechazamos rotundamente estos grupos de la secta religiosa, que nuestros costumbres de la noche a la mañana sean despojadas por estos explotadores, (jamás permitiremos la explotación de nuestro derecho ancestrales).

Agradeciendo por su atención y esperamos contar con sus respuestas

Helmer Cabezón M
Cacique Regional Wounaan

Jacobo Piraza
Pte del Congreso Regional Wounaan

- C.C. - Gobierno y Justicia
- Política Indigenista
- Defensoría del Pueblo
- MIDES, Central y Regional de Chepo

| | |
|-----------------------|-------------|
| GOBERNACIÓN DE PANAMÁ | |
| RECEPCIÓN | |
| FECHA: | 22-2-08 235 |
| RECIBIDO: | Maria Nancy |

Recibido por: Yaniel Phodigy
Director Regional
25/2/08

REPÚBLICA DE PANAMÁ

REPUBLIC OF PANAMA
WOUNAAN PÖDPA NAM PÖMAAM GRAM
Regional Wounaan Congress
Maje, Río Hondo and Platanares
Chiman District-East Panama District
Tel: 6634-6951 and 6585-2743/296-8838

Maje, January 18, 2008

Gladis Bandiera
Governor of the Province of Panama

Dear Governor Bandiera:

Our fraternal greeting wishing you happiness and prosperity in the work that you do. We write to reiterate the negative practices of the Evangelical Church of the Israelite Mission of the New Universal Pact that affect the population of Río Hondo. To inform you of some things:

- During the year they celebrate three celebrations of eight consecutive days. During the celebrations they sacrifice a number of goats and do baptisms with the blood of the sacrificed animals. Men, women, and children fast and do not sleep. They do not send their children to school during the days of fasting.
- On each new moon they celebrate for 24 hours and do not send their children to school.
- Every Saturday they celebrate for 24 hours and put pastors at their congregations to work on Sundays as a workday and not as a day of rest.
- The pastor acts as the incarnation of God and his followers praise him as if he was God in flesh and bone that is with them on earth and those that believe in him will go to heaven in flesh and bone on the day of final judgment.
- These missionaries obligate their followers to dispose of their customs, beliefs, religion, and ignore organizations of the community as well as laws of the government.
- The pastors assess that if they dispose of the land, they will sell the land that has been inhabited for more than six decades.

Therefore, the congress urges the corresponding entities to take heed of the situation urgently and that the missionaries that act as God be investigated and sanctioned for lack of respect, ignorance towards our leaders, exploitation of indigenous adults and children that are vulnerable. Also, we observe with great personal interest the taking advantage of these poor indigenous believing that they will get money after much effort and selling of lands inhabited for more than 6 decades that we have conserved with much effort, time, and money. It is not just that these unknown strange religious groups deprive us of our

rights. If the government does not resolve these problems, we are willing to defend our rights.

We reject these religious groups, that our customs be disposed of by these exploiters. We will never permit the exploitation of our ancestral rights.

We thank you for your attention and we await your response.

Helmer Cabezon M
Regional Wounaan Chief

Jacobo Piraza
Member of the Wounaan Regional Congress

Sent to:

- Government and Justice
- Indigenous Policy
- Defensoría del Pueblo
- MIDES, Central and Regional Chepo

Exhibit 4

Affidavit of Julian Dendy, Returned Peace Corps Volunteer

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Affidavit of Julian Dendy

First Name: Julian

Last Name: Dendy

Nationality: American

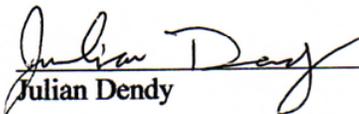
Date and place of birth: 09/07/76 Los Alamos, NM, USA

Mailing Address: 2877 Woodland Rd., Los Alamos, NM, 87544, USA

I, Julian Dendy declare that:

1. In 2002, I lived in the Wounaan Community of Rio Hondo, in the East Panama Province, District of Chiman, Republic of Panama, as a Peace Corps volunteer. Then, as now, there were approximately 300 indigenous people living in the village of Rio Hondo.
2. As a Peace Corps volunteer in the Environmental Education sector, I helped the community to acquire funds for the construction of a slow-sand water filter and community aqueduct, establish a small ecotourism business, enlarge the market for their artwork, and initiate an iguana raising project. Living in the community, I learned that the primary concern of the people was their land rights. As a Peace Corps volunteer, I did not participate in the political process of land claims, but I was witness to the indigenous people's attempts that always ended in vain.
3. In 2002, as well as today, to my knowledge, the District of Chiman had/has no *Comarca* (Indigenous administrative subdivision) for the indigenous Wounaan people. In effect, this means that the State of Panama has not recognized administrative and political autonomy to the Wounaan people in the District of Chiman.
4. In 2002, 2003, and 2008 I observed deforestation within the district, caused by the *colonos*, or non-indigenous peasant settlers. The *colonos* had come to the area in which the indigenous people live, burned the forests, and built temporary work houses for themselves there. The Wounaan community leaders presented petitions and complaints to the Panamanian government, but without a local *Comarca*, this was difficult and no response was given.
5. By end of 2002, the people in the village had given up hope that the State would listen, let alone respond, to their pleas and felt their only option was to take action into their own hands. The villagers took to burning down the *colonos*' buildings – an activity that I never participated in, but was a witness to the houses that had been burnt down while I was away from the village.

6. As a result of a police report filed by the mayor of the neighboring community of Union Santena, we, the Peace Corps volunteers, left the community as requested by the Peace Corps Administration. In order to clarify the fact that we (the Peace Corps) had nothing to do with these protests, the community leaders drafted a letter stating that the burnings were purely authored by the residents of the community.
7. In 2005, there were more conflicts between the *colonos* and the indigenous community. The villagers again tried to expel the *colonos* from the forest. These situations made the Panamanian national news. The result of these conflicts was an agreement between the *colonos* and the community in which the *colonos* agreed not to continue any deforestation until the land rights of the community had been settled and the State had demarcated the lands belonging to the Wounaan people. The execution of this agreement was facilitated by a Panamanian government agency.
8. As I have personally witnessed recent burning and deforestation of the area by the *colonos*, it is evident that this agreement is not being abided by, nor is it being enforced by the Panamanian government.
9. At the moment, I am not involved with the Peace Corps but I continue doing volunteer work with the same indigenous community helping them to organize and look for legal alternatives to defend their forest.

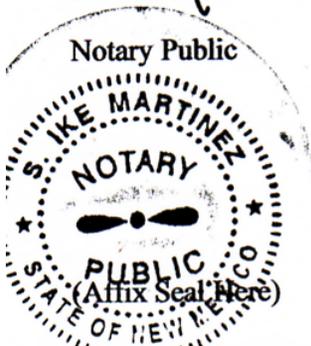

Julian Dendy

12-Feb-08
Date

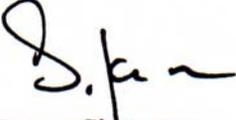
I signed and solemnly certify that I have read the above document and that to the best of my knowledge, information and belief formed after reasonable inquiry and it is well grounded in fact.

Subscribed and sworn to me on 12 FEB, 2008, by Julian Dendy.





My commission expires on 7 Nov. 2010


Notary Signature

Date 2/12/08