

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## HUMAN RIGHTS COMMITTEE 92<sup>ND</sup> SESSION PANAMA, 3<sup>RD</sup> PERIODIC REPORT 24-25 MARCH 2008

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Information submitted to the Committee

### State party report

The third periodic report of Panama was submitted to the Human Rights Committee (the Committee) on 29 August 2007, 17 years late.<sup>1</sup> Panama signed the *International Covenant on Civil and Political Rights* (the Covenant) on 27 July 1976, and ratified it on 8 March 1977.

The majority of Panama's report addresses legislative measures taken to integrate provisions of the Covenant into national law, and provides information on relevant laws, describing their evolution at length. The report includes several pages on 'country context', in which Panama addresses three issues: international law in the Panamanian legal system, changes to the State's legal system and its Constitution, and equality of men and women.

<sup>1</sup> CCPR/C/PAN/3, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

On the first point, the report relays that the Supreme Court has interpreted Constitutional provisions relating to international law to mean that provisions in ratified international treaties create an international obligation and must be matched by national laws.<sup>2</sup> However, it describes some human rights related provisions in treaties which are directly enforceable, such as the right to fair trial. Changes to the State's legal system and Constitution include reforms adopted as a result of the democratisation process.<sup>3</sup> The final section provides information about women in all sectors of society, and highlights that in many cases women are less represented than men in a variety of professions and political roles.

In presenting the report, the head of the delegation and Permanent Representative of Panama to the United Nations in Geneva, Mr. Juan Alberto Castellero said that Panama's 'fundamental approach' to democracy is based on the functional administration of justice. Regarding this priority, he highlighted a new Penal Code to be adopted in May 2008, underlining that it was drafted according to international standards. He also outlined improvements to the penitentiary system, the integration of information technology into the justice system, and programs to improve health care and education. He drew the Committee's attention to the fact that the government was a party to the *Convention on the Rights of Peoples with Disabilities*, it had supported the General Assembly's adoption of the *Declaration on the Rights of Indigenous Peoples*, and implemented a number of programs that protected and promoted indigenous peoples' rights.

### List of Issues

The Committee distributed the list of issues on 26 November 2007.<sup>4</sup> It addressed a variety of topics relevant to the Covenant, with a focus on deprivation of liberty, rights of the child, and minorities. Panama's comprehensive written responses to the list of issues were submitted 7 March 2008.<sup>5</sup>

### NGO parallel reports

Five parallel reports were submitted to the Committee.<sup>6</sup>

1. *Cómite de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)*<sup>7</sup>: outlined the situation of women human rights in Panama in regards to the Covenant;
2. *Conscience and Peace Tax International (CPTI)*: requested the State party to add a statement to its Constitution exempting those with a conscientious objection to bearing arms to counterbalance other legal provisions in the Constitution;
3. *Red de Derechos Humanos de Panama*: addressed discrimination, the right to residency, the penitentiary system, refugees, and rights of the child;
4. *International Human Rights Clinic at Harvard*: described deplorable prison conditions in Panama and made recommendations to various actors, including the State party, on how to improve the conditions;
5. *Program in International Human Rights Law of Indiana University School of Law*: accused Panama of breaching its obligations under the Covenant to indigenous peoples.

During the first meeting of the session, when NGOs were invited to address the Committee, the *International Human Rights Clinic at Harvard* spoke out strongly against Panama's penitentiary system, basing its conclusions on 18 months of visits to detention centers. They were specifically concerned with the rate of

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<sup>2</sup> Ibid, para 8.

<sup>3</sup> The reforms are related to the overseeing of the Panama Canal, the army, the preamble, civil servants and the executive branch of government. Ibid, para 16. See also paras 17-19 for additional detail.

<sup>4</sup> CCPR/C/PAN/Q/3 is available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

<sup>5</sup> CCPR/C/PAN/Q/3/Add.1 is available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

<sup>6</sup> All are available at <http://www2.ohchr.org/english/bodies/hrc/hrcs92.htm>

<sup>7</sup> This report was also subscribed to by CODIM, CONAMUIP, Foro Mujer y Desarrollo, Campaña por los DD SS Y REPRODUCIVOSCEFA, Red Contra la Violencia, and APLAFA.

incarceration (second only to Cuba), and the abominable health conditions. Global Rights also stated their concerns regarding the restrictions of the rights of lesbian, gay, bisexual and transgender people in Panama.

## Themes and issues

### **Panama's delegation**

Panama's delegation was headed by the Permanent Representative of Panama to the United Nations in Geneva, Juan Alberto Castellero. It also included representatives from the Ministry of Government and Justice, the Ministry of Social Development and the Office of the Attorney General. The Director of the Department of Human Rights and Social Development; the Head of the Department of Human Rights in the Ministry of Foreign Affairs; the Director of the Academy of Penitentiary Training in the Ministry of Government and Justice, as well as several other diplomatic staff from the Permanent Mission to the United Nations in Geneva and New York also participated as part of the delegation.

### **Penitentiary system and detention**

The Committee raised concerns about the minimum standards on the treatment of detainees in the penitentiary system, including over population and poor conditions in prisons. Sir Rodley noted that building new prisons is not an effective remedy; the State party must also review the laws sending people to prison (especially given that 60 percent of prisoners are pre-trial detainees presumed innocent), and focus on improving conditions. In addition he expressed concern about pre-trial detention at police stations, in particular the circumstances and authority for detentions, and the consequences when prisoners do not have access to lawyers within 24 hours. Ms. Chanet noted that alternatives to detention were promising, such as the use of electronic bracelets, currently under experiment in Panama.

Responding comprehensively to the questions, the delegation highlighted that the country was moving towards a system in which people would be imprisoned only after they had been found guilty. Contrary to the Committee's allegations, the delegation said that detainees may only be held for 24 hours and must have access to a lawyer. Prisoners without private lawyers were entitled to the same legal protection by public defenders, but that there are only 69 for the entire system, which is too few. He also reiterated the government's commitment to increase prison staff.

### **Women**

In regard to women's rights, the Committee's focused on discrimination against pregnant women at work, lack of wage equality for women, and domestic violence.

Citing reports from the International Labour Organisation (ILO), the Committee highlighted Panama's alleged lack of compliance with standards regarding non-discrimination of pregnant women at work. It also queried Panama about the illegal practice of women undergoing pregnancy testing as part of the hiring process.

The delegation insisted that the Constitution provides for maternity leave, and pledged to investigate allegations of discrimination against women. It also evaluated Panama's commitment to article 25 on the promotion of the equality of women in the workplace, expressing concern about the disparity in men's and women's wages for equal work.

Regarding domestic violence, the delegation explained in detail that relevant legislation provides the means for protection of victims, including through the arrest of presumed aggressors from homes, the removal of victims to safe houses, and removal of children from custody. The Committee emphasised implementation of new provisions relating to this issue in the Criminal Code.

## Refugees

The disparate treatment of refugees interested the Committee, in particular the extent to which a new law grants persons living in Panama for ten years or more legal refugee status, but not does not grant this status to people living in the country for less time.

The delegation maintained that the cut-off time was not arbitrary and that the United Nations Office of the High Commissioner for Refugees (UNHCR) had advised that the regularization of refugees included those living 10 years or more in the country.

The issue was not satisfactorily resolved given that the Committee continued to highlight apparently contradictory information sent by the UNHCR in the previous week. According to this account, the new law does not respect the principle of *non-refoulement*, nor does it prevent the State party from expelling people living in the country less than 10 years.

## Abortion

Question five on the list of issues for Panama addressed abortion. During the dialogue the Committee questioned the basis for the general prohibition of abortion, in particular the prohibition's interference with private life and the woman's right over her own body. Also highlighted was the need to protect the right to abortion of women who had been raped. Currently Panama allows a two-month window to get an abortion, which is too short a time for the victim to deal with the trauma and get the necessary evaluations. Although recognizing the space for the conscientious objection of doctors, Mr Rodley stressed that it not trump the right of a woman to abortion.

In response to the issue of the rationale for Panamanian abortion laws, the head of the delegation cited article 144 of their Penal Code, which outlines the instances in which women may seek abortions, including illness of pregnant mother, where pregnancy risks the mother's life, and rape. As a Catholic country, Panama abides by the moral codes of that religion, including the belief that life begins at conception. On the related issues brought up by Committee members, the delegation agreed to provide further details on the two-month window in writing, and underlined that a doctor's right to conscientious objection does not preclude the women's right to abortion.

## Indigenous peoples

The Committee described the indigenous population as one of the least well off in Panama, and one which requires the State party's special attention. In particular, the government should target special measures for disabled people in indigenous communities. Mr. Sanchez focused on the need to protect the right to property on ancestral lands occupied by indigenous peoples, and suggested the State party seek the assistance of the ILO in this respect. Following up on question 11 on the Committee's list of issues, Mr Lopez focused on the question of the legality of mandating registration in indigenous communities, not only of births and deaths but also of marriages and divorces.

The delegation's general response on these issues was that the government is studying ways to legislate all the measures mentioned by the Committee, including protection of ancestral land. The head of the delegation also clarified that there were no sanctions for non-compliance in the registration of marriages of the indigenous population, which was carried out by local churches and the other similar bodies.

## Children's rights

Questions 19 and 20 of the list of issues dealing with ‘prohibition of slavery and protection of the child’ drew many comments. In particular the Committee was concerned that Panama had no specific legislation on the sexual exploitation of minors. It also expressed confusion about the protection of children under labour laws, in particular under an executive decree of July 2004 which allows for some juvenile domestic work. A related question concerned education and schooling for children, particularly the rate of attendance and enrolment of indigenous children.

Responding to allegations of child labour, Panama explained that it had adopted the ILO Convention No. 182: *Worst Forms of Child Labour Convention* and passed a domestic law that prohibits minors under the age of 18 from work that impedes health or morality. The delegation also described a number of programs addressing child labour, including an initiative that addresses its causes. The delegation agreed to provide further information on the matter in writing.

### **Other issues**

Other issue addressed included the State party’s incorporation of the Covenant into its domestic legal system, judicial rulings on the Covenant, and the need for a clear hierarchy of laws in the national legal system to ensure that core international norms are enforced. The work of the Truth Commission<sup>8</sup> was also a subject of interest, in particular the number of prosecutions of cases recommended by the Commission, the effect of the statute of limitations on human rights cases, and the President’s veto of the unanimously endorsed plan to extend the mandate of the Commission.

### **Conclusions and next steps**

In his closing remarks, Mr. Castellero expressed thanks to his own delegation for their commitment and hard work, though he apologised that so few civil society groups were consulted in the preparation of Panama’s report to the Committee, an issue he promised the government would rectify in the next reporting cycle. He apologised for the lateness of Panama’s report, and agreed to provide all the additional written replies requested by members of the Committee within the week.

The Committee Chairperson gave Panama kudos for the steps it had taken to modernise its human rights law, including the development of the new Penal Code, the elimination of certain crimes, and access to abortion. He underscored the Committee’s concern with implementation of the Covenant through the domestic legal system, the status of indigenous peoples, child labour, and the criminalisation of homosexuality. He also reiterated the need for statistics, which were lacking in the State party’s report.

In the last five years, Panama has been before only one other treaty body, the Committee on the Rights of the Child (CRC). The CRC expressed a similar concern to the Human Rights Committee in its concluding observations by drawing attention to the high number of children involved in labour, mainly as domestic and rural workers. It urged Panama to adequately enforce child labour provisions, and to take measures to prevent child labour, in rural as well as urban areas.<sup>9</sup> Like the Human Rights Committee, it also took stock of the intersection of indigenous and disability rights, and requested Panama to pay special attention to children with disabilities in rural areas and indigenous communities.<sup>10</sup>

At the time of this writing, the Committee’s concluding remarks are only available in Spanish.

*Last revised and updated: 9 June 2008.*

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<sup>8</sup> Established by Executive Degree of 18 January 2001 and mandated to investigate the killings and disappearances alleged to have occurred during the military dictatorships between 1968 and 1989.

<sup>9</sup> Concluding Observations of the Committee on the Rights of the Child, CRC/C/15/Add.233,30 June 2004

<sup>10</sup> Treaty bodies which delivered concluding observations more than five years ago are available at

<http://www.ohchr.org/EN/countries/LACRegion/Pages/PAIndex.aspx>

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## **ABOUT THE PUBLICATION**

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