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Indigenous Land Rights in Costa Rica: The Gendered Experience

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Table of Contents

I. Abstract	3
II. Costa Rica: Historical Context	4
III. International & Domestic Legal Obligations	5
i. Costa Rica on Paper	5
ii. Costa Rica in Actuality	7
IV. Public Attitudes Towards Indigenous Groups	8
V. Indigenous People and Land Loss	9
i. Place-Based Identity	9
ii. The Broran	10
iii. Responses to Land Loss by the Broran Women	13
VI. Conclusions	16
VII. Sources	18

I. Abstract

This paper examines the experience of indigenous women in Costa Rica, specifically the Broran, in regards to land rights violations. Using international law on women's rights, land rights, and indigenous rights as a backdrop, this paper coalesces qualitative research on domestic attitudes towards indigenous communities with qualitative research on the effects and response of indigenous Broran women to the experience of continued land loss. Specifically examining the experience of indigenous women in this struggle reveals women's key role in maintaining culture in the face of land loss even in the context of an extremely place-based identity, arguing that indigenous women are essential in preventing a slow ethnocide of indigenous groups. I traveled to Costa Rica in January of 2015 in order to research this, and specifically spoke with the indigenous Broran group, also known as the Terraba, as my case study. I also spoke with experts such as Jose Carlos Morales, who served as an expert on the UN's Expert Mechanism on the Rights of Indigenous People and the President of the World Council of Indigenous Peoples.

II. Costa Rica: Historical Context

Costa Rica was officially colonized in 1564, when the Spanish established the colonial capital of Cartago.¹ The next 250 years of colonization brought about increased trade and economic growth based on manufacturing and cultivation, but also subsequent disenfranchisement of the indigenous peoples. “These diverse commercial activities were made possible by the exploitation of the indigenous and black labor... as the total number of natives declined, the exploitation of the remaining ones intensified.”² This statement characterizes the tone and treatment of the indigenous peoples of Costa Rica for centuries to come. In 1821, Mexico overthrew the Spanish colonial occupation and declared all of Central America as independent.³ However, this did not change the makeup of the newly independent country; as of 2011, 84 percent of Costa Ricans are white or mestizo, while only 2.4 percent are of indigenous descent.⁴ As a minority, indigenous groups are pushed out of political spheres. There are only 104,000 indigenous individuals in Costa Rica today⁵, making up 8 different tribes⁶.

Today, Costa Rica is known in the international community as a human rights beacon in Central America. Historians claim “Costa Ricans have been able to build political democracy and achieve a high degree of social justice in a region where dictatorship and grotesque inequalities have been the sad norm.” Costa Rica is a

¹ Ivan Molina & Stephen Palmer, *The History of Costa Rica*. (at 184)

² Id. (at 34)

³ Id. (at 48)

⁴ CIA World Factbook, Costa Rica

⁵ Costa Rican census, 2011

⁶ as told by José Carlos Morales (01/03/2015)

signatory of multiple UN conventions and treaties on human rights, and it continues to embed those values into domestic law as well. However, it is also our responsibility to note that this high level of social justice is not being extended to all groups of people in Costa Rica, and that some of these conventions are currently only cosmetic in nature.

III. International & Domestic Legal Obligations

i. Costa Rica on Paper

Costa Rica retains its positive image in the view of the international community due to the impressive array of human rights declarations and treaties that it is signatory to. “Although not enforceable, these documents articulate general principles of policy and action for the global community. Like other policy statements, they set standards that those who wish to be members of the “civilized” international community must recognize. These standards are important for prestige and for enhancing trade and relations.”⁷ Below is a list of international treaties⁸, declarations, and institutions that Costa Rica is signatory to which could be used as mechanisms to protect the land rights of indigenous peoples, and specifically indigenous women.

- a. UN International Covenant on Economic, Social, and Cultural Rights
- b. UN Convention on the Elimination of All Forms of Discrimination against Women
- c. UN Optional protocol to the Convention on the Elimination of Discrimination against Women
- d. Convention on the Political Rights of Women
- e. UN Declaration on the Rights of Indigenous Peoples

⁷ Sally Engle Merry, *Human Rights and Gender Violence* (at 68)

⁸ the United Nations

- f. UN Expert Mechanism on the Rights of Indigenous Peoples
- g. American Convention on Human Rights: includes being member of the Inter-American Commission on Human Rights & the Inter-American Court of Human Rights
- h. Convention on the Prevention and Punishment of the Crime of Genocide

In addition to these international laws, Costa Rica has also passed domestic laws regarding indigenous land rights. The government has established twenty-four recognized and titled indigenous territories, however, this does not cover all of the traditionally indigenous lands. In 1977, Ley Indígena was passed, which required all non-indigenous persons to be removed from indigenous territories.⁹ This included good faith possessors, which refers to people who have acquired this land through a legal sale; these individuals were to be compensated for their land. However, the government has not made any effort to actually comply with this law, nor has it established a method or source of funding to do so. The government also has not established any subsequent laws to clarify ambiguities; for example, it is unclear if indigenous peoples may lay claim to illegally occupied lands that were traditionally indigenous but not outlined in the titled territories.¹⁰ In addition, the protection in the Ley Indígena that recognizes and protects indigenous governance and traditional structure was made null and void less than a year later by a decree that established la Asociación de Desarrollo Integral, or ADIs, in indigenous territories, which imposed a certain structure on the local government and

⁹ Forest Peoples Program, *Violations of Indigenous People's Rights: The example of Costa Rica* (at 19).

¹⁰ *Id.* (at 20)

therefore deprives the indigenous groups of the autonomy and traditional structure they had gained from the Ley Indígena.

ii. **Costa Rica in Actuality**

Despite being signatory to the above mentioned documents and more, as well as having relevant domestic laws in place, issues abound. According to the United States' 2013 Human Rights Report on Costa Rica, observed human rights violations included harsh prison conditions, delays in judicial process, some government corruption, domestic violence against women and children, trafficking in persons, sex trafficking of children, and discrimination based on sexual identity, impunity for crimes, and lastly, land disputes in indigenous territories.¹¹ "We are human and decent, and so we say that everyone ought to enjoy their human rights. However, human-rights implementation is rather expensive. We are unwilling to pay the bill."¹² Costa Rica's social climate is one in which they are not ready to put forth the effort to ensure that all of these agreements are lived up to, because just by being signatory they gain international reputability.

Jose Carlos Morales, a member of the Bribri tribe and a former UN representative for indigenous peoples in multiple capacities, believes that, "overall, Costa Rica is a happy and law-abiding country, but that doesn't apply to indigenous groups." Morales also says that he sees the future as dark for indigenous peoples if the government does not take action to change the attitude of violence that the general

¹¹ US Human Rights Report on Costa Rica, 2013

¹² Michael Freeman, *Human Rights* (at 205)

public holds towards indigenous groups.¹³ One example of this attitude of violence towards indigenous groups is in the widespread practice of illegal occupation of declared indigenous territories. Alancay Morales, who works towards realizing indigenous rights through both structural and grassroots approaches, did a study that found that non-indigenous people occupy 43% of indigenous territories,¹⁴ despite the domestic law that protects these areas from exactly that. The Costa Rican government still retains jurisprudence and governing power over these territories, so cases of illegal occupation or violence over land disputes are rarely reported, for indigenous fear of the local police is too great.¹⁵

In comparison to its Central American counterparts, Costa Rica is strides ahead in the realization of human rights. However, this does not mean that the issues that do still exist can be ignored. “For human rights to be effective, they have to go beyond the normative, textual essence and become a part of the legal culture of a given society,”¹⁶ which is the next step for Costa Rica as they strive to live up to their label as a human rights beacon in Central America.

IV. Public Attitudes Towards Indigenous Groups

The majority of Costa Ricans have a less than favorable view of indigenous peoples; indigenous groups are viewed as a hindrance to the government’s plans for

¹³ José Carlos Morales (01/03/2015)

¹⁴ Forest Peoples Program, *Violations of Indigenous People’s Rights: The example of Costa Rica*

¹⁵ José Carlos Morales (01/03/2015)

¹⁶ Rebecca J. Cook, *The Human Rights of Women* (at 39)

agricultural expansion, tourism expansion, and other projects that require use of land. Their lifestyle is also in opposition of Costa Rica's desire to globalize by maintaining a traditional lifeway other than the mainstream culture; "Rural culture was... inexorably displaced by urban culture in a process linked to mass consumption."¹⁷ Cultural transnationalization began in Costa Rica with the colonialist expansion of agriculture for trade, such as crops like coffee:

"The social and political effects of the coffee boom [starting in the 1860's] were visible early on. The losers of this process were... indigenous communities of the Central Valley, dispossessed of their lands by the feverish pace of agricultural colonization. The only option for the native groups was to move further into the wilderness (towards Talamanca, for the most part), a process that condemned them to marginalization, poverty and neglect."¹⁸

The next agricultural boom after coffee was that of bananas, and "the "expansion of banana cultivation was catastrophic for the Bribri natives of Talamanca and Sixaola."¹⁹ The theme of disenfranchisement of indigenous community for economic betterment of the majority continues today, both in the context of the expansion of the tourism industry and development projects, with the most problematic one being the Diquís Dam hydroelectric project.

V. Indigenous People & Land Loss

i. Place-based Identity

¹⁷ Ivan Molina & Stephen Palmer, *The History of Costa Rica*. (at 134)

¹⁸ *Id.* (at 65)

¹⁹ *Id.* (at 80)

For indigenous communities, identity is extremely place-based. The UN Commission on Human Rights' Working Group on Indigenous Populations "concluded that the distinctive characteristic of indigenous peoples is land-rootedness."²⁰ Therefore, to lose land is more than losing a place of habitation, it means losing a culture and a lifeway; it is extremely difficult to retain cultural practices in the face of land rights violations. In this way, land rights violations against indigenous peoples are a form of ethnocide. Ethnocide, or cultural genocide, exterminates a culture without necessarily exterminating the people; "it exists when a people's right to transmit and develop its own culture and its own language, whether collectively or individually, is denied."²¹ In 1981, UNESCO's *Declaration of San José* declared ethnocide to be a form of genocide, the first international declaration that did not promote assimilation as a way for indigenous peoples to secure their rights. Despite UNESCO's declaration, the UN has not included ethnocide as a part of the Geneva conventions.

In Costa Rica, ethnocide is largely being driven by the lack of economic self-determination of indigenous peoples as the government continues to push the groups to assimilate, does not protect them from a culture of violence and land encroachment, and promotes projects such as the Diquís dam on the already diminished tribal land.

ii. **The Broran**

The Broran are an indigenous group that live in the Puntarenas region of southern Costa Rica along the Térraba River; there are approximately 750 Broran

²⁰ Michael Haas, *International Human Rights* (at 125)

²¹ *Id.* (at 124)

people left in Costa Rica.²² The general public knows them as the T rraba, however, this is the Spanish word for them; the group is working to reclaim their traditional name, Broran.²³ Ten years ago, the Costa Rican government declared that they no longer existed, inherently denying them any rights as citizens, and much less as indigenous peoples.²⁴

The Costa Rican government does not protect and even directly infringes on the rights of indigenous groups. For the Broran, “pressures for development, including construction of the Inter-American highway, caused substantial losses of indigenous lands, as part of the construction itself and the mass migrations that accompanied it.”²⁵ Currently, the most well-known and most destructive activity the government is engaging in to infringe on the rights of indigenous groups’ land is in regards to the Diqu s Dam hydroelectric project, which would be the largest hydroelectric project in Central America. This dam, the planning for which began in 2007, would be in the Broran’s territory, and would require flooding the river basin of R o General. “In the Teribe community, the dam would flood nearly 10% of the total indigenous territory recognized by Costa Rica as comprising T rraba. However, because 90% of recognized Teribe land is presently in the hands of non-indigenous individuals, the projected inundation will result in the flooding of approximately 650 hectares of the 10%

²² UT Law Human Rights Clinic, *Swimming Against the Current: The Teribe Peoples and the El Diqu s Hydroelectric Dam in Costa Rica* (at 15)

²³ interviews with Broran people living in the Broran territory- *also known as Teribe territory* (01/08/2015)

²⁴ *Id.*

²⁵ UT Law Human Rights Clinic, *Swimming Against the Current: The Teribe Peoples and the El Diqu s Hydroelectric Dam in Costa Rica* (at 16)

of land in indigenous possession.”²⁶ This would fragment the land, its economic and sacred cultural resources, displace the tribe, and violate international law under the Declaration of the Rights of Indigenous Peoples.

The Costa Rican government claims that they did not violate any laws because they consulted with the land occupants and governing body of the territory. However, the occupants they consulted with were illegal occupants, not the indigenous groups that legally reside there, and the governing body was the ADI, which “fails in the Teribe community to present a legitimate, unified response to ICE,”²⁷ ICE referring to “Instituto Costarricense de Electricidad,” which is the Costa Rican government’s electricity provider that is heading up the Diquís Dam venture.

From the point of view of the Broran, to develop the dam on their land “is not modification, but destruction.”²⁸ This is especially true because their territory has already had sizeable land loss and previous development (such as the inter-American highway). The land loss of the size that the Diquís Dam is proposing would be devastating, both culturally and economically.²⁹ The elder Broran that oversees management of environmental issues said, “The river is our brother, but for the government, the Diquís Dam is gold.”³⁰ This reveals the ideology of interconnectedness of their group with that specific land, and its irreplaceability.

²⁶ UT Law Human Rights Clinic, *Swimming Against the Current: The Teribe Peoples and the El Diquís Hydroelectric Dam in Costa Rica* (at 36)

²⁷ *Id.* (at 33)

²⁸ Broran elder who oversees territory’s environmental issues (01/08/2015)

²⁹ UT Law Human Rights Clinic, *Swimming Against the Current: The Teribe Peoples and the El Diquís Hydroelectric Dam in Costa Rica* (at 18)

³⁰ Broran elder who oversees territory’s environmental issues (01/08/2015)

iii. Responses to Land Loss by the Broran Women³¹

While in the Broran territory, I met with the Tiger's Hand women's organization. Tiger's Hand focuses on the rights and needs of their indigenous women in the context of the right to land, safety, and expression of culture. The women in particular emphasized their belief that the path to revitalization and preservation of culture means that they must be involved in both political activism and cultural activities. As much as they work through politics to gain self-determination, they also understand such recognition would mean nothing if the culture is already lost. Although all of the women in the Broran community have endeavored to educate their children about their traditions, Tiger's Hand promotes cultural preservation even more so as they are also politically active.

The women have taken many measures to reclaim and preserve their culture. First, they did research on traditions they had already lost by visiting the Broran of Panama, and met with the elders responsible for preserving culture. Using this cultural consultation to augment the practices they still remembered, Tiger's Hand fights the effects of land loss by practicing and teaching their traditional food, medicine, dress, song, dance, music, and language in their community, and especially with youth. When I was in their territory, they had just finished a very important festival that happens for the New Year, called the dance of the bull. The women proudly talked of the success of the festival and showed some of the artisanal masks and costumes that were worn for

³¹ section based off interview with Broran women's group, Tiger's Hand (01/08/2015)

the occasion. Appropriately, the festival celebrates the survival of their culture even through colonialism.

Much of the women's home and economic life depends on the resources on their land for purposes of agriculture and artisanship. In order to preserve the plants that they use in traditional cooking and medicine, Tiger's Hand is educating families in sustainable agriculture and food production. Sustainability for them involves the preservation of seeds of local plants should they need to be repopulated, protection of the environment, and nutrition training. The Indigenous Women's Fund financially supports these endeavors. Artisanship is one of the main avenues of income for the Broran women, and is dependent on resources from the land because many of their traditional crafts are created from forest material.

A striking difference between the experience and perspective of men and women in land rights is that as economic stability becomes more difficult, the Broran men are illegally selling parts of the indigenous land, owned by the tribe, to non-indigenous people, and do not understand the negative effects this has on the community. The men that engage in this believe that they are doing something positive because their values lie in maintaining economic stability before anything else. However, the women aim to maintain economic stability through utilizing agriculture and artisanship, which requires land, and is also a more sustainable approach than continuously selling land. Women better understand this concept because they are the ones that cultivate the land as well as most use its resources. Because of the disagreement among genders about how to best support their community, it has been a necessity for women to become politically

involved in order to ensure that their perspective is represented in dealings with the government. The matriarchal organization of the Broran has been essential in the women being able to do this, as “the whole question of women’s access to land and other economic resources is one that is rarely discussed in the context of international human rights law.”³² The Broran women have leadership within the tribe, and therefore are able to assert their rights and present their perspectives in a political arena despite the lack of international law regarding their land rights as women specifically.

Politically and socially, the Tiger’s Hand women’s group claims a louder voice by uniting with women from all of the eight other indigenous groups from the twenty-four different territories. This helps them make stronger demands. They have proposed a decision-making structure for future sovereignty talks, as self-determination will be essential to permanently maintaining land and culture. They have taken the example of the Boruca and Curré, the indigenous groups who successfully banded together with each other and non-indigenous communities to stage protests and blockades to bring attention to the violation of their rights, which caused them to eventually gain international opposition to the dam project on their land. Because the dam was not built at Cajón, which would affect both the Boruca and the Curré territories, the Diquís Dam was proposed.³³ The Broran women saw how these two communities strengthened their voice by working together, and understand that to be their best chance at stopping the Diquís Dam from being continued.

³² Rebecca J. Cook, *Human Rights of Women* (at 499)

³³ UT Law Human Rights Clinic, *Swimming Against the Current: The Teribe Peoples and the El Diquís Hydroelectric Dam in Costa Rica* (at 32)

Despite the cultural challenges in the face of land loss, the Broran have been successful at holding off further development of the dam by using devices put in place by international law. In 2011, the Broran brought a lawsuit against the ICE to force workers off of their land; because of this lawsuit, a court order suspended work on the dam until the lawsuit is solved.³⁴ The Broran women, Tiger's Hand women's organization in particular, was a large part in bringing this lawsuit to fruition. This would not have been possible were the Broran not a matriarchal society.

Although the dam project is on hold, the government has still not backed down in their push to develop on indigenous lands; it is key that the Broran and other indigenous groups in the area remain politically active and united in order to pursue a more final decision in the context of the Diquís Dam. Until then, it is key that the women ensure that culture continues to be practiced and transmitted as a method of resilience in the face of disenfranchisement.

VI. Conclusions

From my case study with the Broran indigenous group, I will conclude with a twofold argument about the specific experience of indigenous women in the face of land loss, and then recommend how to best move forward in addressing such land loss.

First, indigenous women have a more multi-faceted involvement in the struggle for achieving the rights they are entitled to and in fighting the effects of the land loss that their indigenous groups have already sustained. This is because they are both key

³⁴ Tico Times: *Indigenous Community Divided on Dam Project*

maintainers of culture through tradition, and are also greatly involved in political activism and advocacy. Because of this multi-faceted involvement, I argue that indigenous women are the absolute essential factor in preventing what has immense potential to be ethnocide. Secondly, because of this intense involvement in cultural preservation through many forms, I also argue that it is harder for women to maintain their normal day-to-day expressions of culture in the face of land loss. As they lose access to resources, duties that are normally exercised by women, such as agricultural production, cooking, and traditional activities like artisanship become more difficult. Because of this, women experience the loss of culture before men, and can therefore understand the importance of land in maintaining the culture even before it is gone. To remedy this, women should work to more actively engage and align the men's motivations with their own motivations to best maintain the economic and cultural strength of the indigenous community.

As the issue of land loss continues to affect the Broran and other tribes in Costa Rica, it is key that the indigenous communities utilize the tools that are provided to them through both international and domestic law to further push for the recognition of their claim to land, asserting why maintaining their land is equivalent to maintaining identity, and could prevent a country-wide ethnocide. The women must continue to preserve their culture through practice and education; however, they also must bring these issues to the international sphere so that the Costa Rican government can be held accountable for the international laws that they have agreed to uphold.

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