UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/PAN/3
29 August 2007

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic report**

# PANAMA * **

[9 February 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

** Annexes can be consulted in the files of the secretariat.

GE.07-43776 (EXT)

## CONTENTS

## I. COUNTRY CONTEXT

1. On the basis of the Harmonized guidelines on reporting under the international human rights treaties (document HRI/MC/2006/3 and Corr.1), the process of preparation of reports provides every State Party with an opportunity to "conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party.".

2. In the Republic of Panama, authority to conclude international agreements lies with the President of the Republic, who delegates that power to the Minister of Foreign Affairs, who in turn may delegate it to another Minister or to diplomatic agents, to whom the President confers full powers to that effect.

3. Under Panamanian law, the authority to conclude treaties lies with the executive branch of Government. Under article 153 (3) of the Constitution of Panama, however, treaties must be approved by the legislative body before ratification. The procedure followed is described below.

4. The Ministry of Foreign Affairs draws up the draft law adopting a given agreement, together with the related explanatory statement, which contains the objectives and advantages of the agreement, and transmits it to the Cabinet in order to obtain its authorization to present the draft law to the National Assembly. This procedure is in keeping with article 159 of the Constitution.

5. Once the draft law is adopted by the Cabinet, the Minister of Foreign Affairs presents it at the plenary session of the National Assembly. Subsequently, the draft law is sent to the Committee on Foreign Affairs of the National Assembly, where the first reading takes place, and then returned to the plenary session of the National Assembly for the second and third readings.

6. Once adopted by the National Assembly, the draft law is transmitted to the Head of State for signature and then promulgated through the Official Journal, thereby becoming national law.

7. In keeping with the rank of international agreements, article 4 of the Constitution stipulates that Panama shall abide by the rules of international law. This premise could mean that Panama opts for affirming the prevalence of international law over national law. That conception led various jurists at national level to ascribe to international law provisions a hierarchical status comparable to that of constitutional provisions, attributing to both the same normative value and using international provisions as if they were constitutional to declare lower ranking provisions unconstitutional. It was in that context that the Supreme Court of Justice ruled on the scope and meaning of article 4 of the Constitution and outlined a criterion for establishing the value ascribable to international law provisions and for considering them or not as an integral part of the constitutional corpus.

8. Accordingly, the Supreme Court has in various judgements defined the scope of article 4 of the Constitution, indicating that, generally speaking, international law provisions are not part of the constitutional corpus but that treaties under international law create for the Republic of Panama an obligation to adapt national legislation to the international law provisions ratified through those treaties. In other words, in order to be effective, international provisions must be

consistently matched by national ones and, until such adjustment has taken place, international obligations or rules are not directly enforceable.

9. To this date, Panama has ratified various agreements in respect of which the plenary session of the Supreme Court, examining their rank and normative value within the framework of domestic law, has formulated the following criterion:

> "Article 3 (5) of the Constitution of the International Labour Organization (ILO), which the plaintiff claims was infringed, does not have any constitutional rank and therefore article 1066 of the labour code may not be criticized as unconstitutional on the grounds that it violates a provision which, although contained in an international agreement that the Republic has an obligation to respect and to fulfil, lacks constitutional rank and is not part of the constitutional corpus. Once incorporated into our positive law through the procedures legally provided for, the international provision in question shall acquire a rank equal to that of an established law." (1)

10. There are, however, exceptions to this general rule outlined by the Supreme Court. In view of their importance for human rights, some international law provisions have constitutional rank and, as part of the constitutional corpus, are directly enforceable. They are provisions that the Supreme Court has acknowledged in every specific case, recognizing their aforementioned value. An example of such international provisions is the ones on fair trial, contained in the American Convention on Human Rights (ACHR or "Pact of San José, Costa Rica"), ratified by the Republic of Panama through act No. 15 of 28 October 1977.

11. The following verdict is in one of the various Supreme Court judgements on which the above exception may be based:

> "It is appropriate to note that the Supreme Court has established the existence, in Panama, of a constitutional corpus. It forms a set of rules which, together with the Constitution proper, are used by the Court to issue judgments on the constitutionality of laws and other official acts subject to constitutionality control. In that context, the plenary session of the Supreme Court holds that article 8 of the American Convention on Human Rights is part of the constitutional corpus of the Republic of Panama by virtue of article 4 of the Constitution. The Plenary session considers that certain human rights, such as the right to a fair trial, are crucial to the rule of law, which is being built in the Republic of Panama; and that, in accordance with the foregoing statements, article 8 of the American Convention on Human Rights combines with article 32 of the Constitution to form therewith the corpus of constitutional guarantees for fair trial in our country." (2)

12. Both the general rule and the above exception are reiterated as part of the standards formulated in Panamanian legal writings. In that connection, the jurist Artturo Hoyos says the following:

> "The countries subscribing to the constitutional corpus doctrine do not include the provisions of international law in the constitutional corpus… We maintain that in Panama, generally speaking, the rules of international law are not part of the constitutional corpus. Only some civil and political rights which are crucial to the rule of law may be part of that corpus. To be sure, those maintaining the contrary position invoke article 4 of the

> Constitution, which states that Panama shall abide by the rules of international law. The Supreme Court, however, has not held that this constitutional provision incorporates all international law provisions into the Constitution. In the judgement of 23 May 1991, dealing with a request for unconstitutionality under act No. 25 of 14 December 1990, the Court ruled that international agreements ratified by Panama 'only formally have the value of a law; they lack constitutional rank…. Exceptionally, certain provisions of international law, ratified by Panama, may have constitutional rank, where they establish fundamental rights which are essential to the rule of law. For the time being, however, this only concerns due legal process'."(3)

13. Since 1992, the constitutional and legal system of the Republic of Panama has undergone profound changes. Various constitutional reform efforts have been launched as a result of the democratization process. Three such initiatives took place through legislative acts No. 1 of 1993, No. 2 of 1994 and No. 1 of 2004.

14. Current article 313, under title XIII of the Constitution of Panama, is worded as follows:

> "ARTICLE 313: The initiative to propose constitutional amendments shall be the responsibility of the National Assembly, the Cabinet or the Supreme Court. Such amendments shall be adopted through one of the following procedures:
>
> (1) Through a constitutional act, adopted in three readings by an absolute majority in the National Assembly, published in the Official Journal and transmitted by the executive branch of Government to that Assembly within the first five days of ordinary sessions following the establishment of the National Assembly emerging from the latest general elections, in order that the act should be read and adopted without amendment, in a single reading and by an absolute majority in the Assembly during its first legislative period.
>
> (2) Through a constitutional act, adopted in three readings by an absolute majority in the National Assembly, in a single legislative period, and also adopted, in three readings, by an absolute majority in the said Assembly, in the immediately subsequent legislative period. At that time, the text adopted during the previous legislative period may be amended. The constitutional act thus approved shall be published in the Official Journal and submitted to a direct popular consultation by referendum held on a date set by the National Assembly, within a period no shorter than three months and no longer than six months from the adoption of the act by the second legislature."

15. Legislative act No. 1 of 1993 and legislative act No. 2 of 1994 used the classic method for amendment, involving the participation of two different legislative assemblies and provided for in paragraph (1) of article 313, a method preferred in view of failed attempts at constitutional reform by referendum.

16. The reforms adopted through the above legislative acts regarded the Panama Canal, the army, the preamble, civil servants and the executive branch of Government.

17. With regard to the Panama Canal, the Panama Canal Authority was established as an independent public-law corporation privately responsible for the administration, operation, upkeep, maintenance and modernization of the Canal. Provisions were drawn up regarding the

composition, method of election, powers and duties of the Canal's Board of Directors. Special labour regulations were introduced.

18. With regard to the army, the adopted article 305 guarantees that the Republic of Panama shall have no army; provides for the organization of the police units necessary for the protection of the citizens; and stipulates that a special police may be temporarily set up by law in the face of any threat involving external aggression imperilling the stability and security of the State of Panama. Furthermore, article 306 forbids members of the police force to individually or collectively participate in partisan politics or engage in political manifestations or statements but allows them to vote freely in elections, as any other citizen.

19. With regard to the preamble, civil servants and the executive, the amendments basically involved the adjustment of some provisions to the actual conditions and objectives introduced by the reforms.

20. With legislative act No. 1 of 2004, the Republic of Panama entered a stage of improving its democratic system in line with earlier reforms and of enhancing citizen participation. Although in recent years these reforms led to the discussion of various questions and to various social achievements, a number of further issues are still pending. The main reforms that have been undertaken regard the introduction of a third method for constitutional reform, involving a Constitutional Assembly; such changes to the legislative branch as modifying the number of its members, eliminating immunity and reducing the number of alternates; comparable changes that apply to the President of the Republic and to the mayors; the establishment of a Court of Auditors; reinforcement of the Electoral Tribunal ; and upgrading of the Ombudsman's Office to constitutional level. That office was created through act No. 7 of 5 February 1997 as an independent institution responsible for ensuring the protection of the citizens' fundamental rights and freedoms - guaranteed by the Constitution and provided for in international human rights instruments and the legislation - through a non-judicial examination of the deeds, acts or omissions of civil servants, providers of public services and persons responsible for ensuring respect for such services.

21. With regard to women's participation in the country's political, educational and economic life, it must be noted that, despite breathtaking technological advances and the so-called women's liberation movement, women largely continue to opt for traditional careers. This is basically due to a persisting differentiation between men's and women's social roles rooted in prejudices and stereotypes. Moreover, Panama's oversized services sector sets the trend in the supply of labour and consequently in the demand for higher education.

22. According to a survey on gender equality at the University of Panama, dated October 2005 and conducted by the Women's Institute and the Vice-Chancellery for research and postgraduate studies, enrolment at the University in 2004 comprised 23,746 men and 49,003 women. These figures were broken down by facility, faculty and location.

23. For instance, in the faculties of Public Administration, Education Science, Economics, Pharmacy, Humanities, Nursing and Dentistry, the proportion of male to female registered students was one to two.

24. In all faculties, save for Education Science, Nursing, Pharmacy and Humanities, the academic staff comprised more men than women.

25. In the School of Medicine, women's enrolment had been slightly higher than men's and, as a result, women in 2004 accounted for 61.6 per cent of registered students. Medicine had formerly been regarded as a profession dominated by men

26. With regard to such professions as lawyers, engineers, physicians and architects, the Board of university presidents and the Private and official universities, in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), conducted in 2000 a survey on the "Feminization of the student body of the universities in the Republic of Panama". That survey contains the following information:

**Table: Lawyers graduated from the University of Panama, 2000**
(Per cent)

| | |
|---|---|
| Men | 22.5 |
| Women | 77.7 |

*Source:* University of Panama.

**Table: School of Medicine graduates, 2000**
(Per cent)

| | |
|---|---|
| Men | 45.9 |
| Women | 54.1 |

*Source:* University of Panama.

**Table: School of Architecture graduates, 2000**
(Per cent)

| | |
|---|---|
| Men | 46.0 |
| Women | 54.0 |

*Source:* Universidad Nacional de Panamá.

**Table: School of Engineering graduates, 2000**
(Per cent)

| Branch | Men | Women |
|---|---|---|
| Civil engineering | 68.6 | 40.1 |
| Electronic engineering | 88.9 | 11.1 |
| Industrial engineering | 40.8 | 59.2 |
| Mechanical engineering | 96.6 | 3.4 |
| Computer engineering | 49.9 | 50.1 |

*Source:* Universidad Tecnológica de Panamá.

27. With regard to early and terminal secondary education students, the Ministry of Education has provided the following information:

**Official enrolment in early and terminal secondary education, 2004**

| Total | Men | Women |
|---|---|---|
| 216,229 | 106,717 | 109,512 |

*Source:* Ministry of Education.

## B. Participation in the economy

28. With regard to economic decision making, the situation of women in 2002 had improved, although they still lagged. Women's occupancy of posts, as a whole, amounted to 38.1 per cent, a level slightly lower - by one percentage point - than in 2000. In respect of professional and technical positions, women's participation in 2002 was 49.0 per cent, the same as in 2000. The difference between women and men amounted to barely 2 percentage points.

29. In 2002, women continued to participate in political decision making and in income on unequal terms, although their representation in the technical professions improved.

30. Panamanian women are mainly active in the services - or tertiary - sector of the economy, including such areas as insurance, tourism, banking, retail trade and education.

31. In 2004, five per cent of employed women worked in the primary sector of the economy, which involves direct exploitation of natural resources; 11.3 per cent worked in the secondary sector, which primarily involves use of machinery and ever more automated processes for transforming raw materials supplied by the primary sector; and 83.6 per cent work in the tertiary sector.

32. In absolute numbers, in 2004, 354,048 women were active in the tertiary sector, and were mainly employed in the areas of wholesale and retail trade, domestic services, education and hotels and restaurants. Of every ten domestic workers, nine were women.

33. Women face greater difficulties than men regarding access to employment and therefore show higher unemployment rates.

34. According to the 2005 Household survey, workers aged 25 or more comprised 534,170 women (accounting for 47.4 per cent of the female workforce) and 874,733 men (accounting for 80.3 per cent of the male workforce).

35. In the same year, workers aged 15 or more comprised 463,849 women and 809,185 men.

36. Although, as noted by the Committee on the Elimination of Discrimination against Women, women's participation in the country's economic activity has not attained the desired levels (4), numerous institutional efforts to that end are under way, such as, for instance, plans aimed at encouraging women to pursue non-traditional careers, with appropriate courses offered by the National Vocational Training Institute for Human Development (INADEH). Notably, according to UNESCO statistics, Panama is one of the countries displaying top women's

enrolment rates at university level, an auspicious indication regarding the situation of Panamanian women in the labour market.

37. With regard to women's participation in both electoral politics and employment, the Ministry of Social Development promoting such key initiatives as the Women and Work Network, which consists in integrating women into the labour market of Panama under conditions of fairness. Moreover, through the National Directorate for Women, the Ministry participates in the preparation of the Clara González National report on the situation of women in Panama and acts as the main State body pursuing the strategic targets identified under the Plan for equal opportunities for women (PIOM II 2002-2006).

38. The objective of equal opportunities has led to the promulgation of various legal instruments constituting a formal framework for building in Panama, day by day, a solid basis for women's representation in the various areas of activity developed in the country.

39. Special mention should be made of act No. 22 of 1997, establishing a 30 per cent obligatory quota for women's participation in lists of candidates to party offices, in appointments to the Cabinet and in the management of autonomous and semi-autonomous bodies; act No. 4 on equal opportunities for women, promulgated in January 1999; and executive decree No. 53, promulgated in 2002 and regulating that act.

40. In the 2004 general elections, although women accounted for 15.43 per cent of candidates (only one percentage point less than in the previous election), an increased number of women sought election as municipal councillors, town representatives and members of the Central American Parliament (PARLACEN).

41. The number of women deputies increased from 6 after the 1999 elections to 13 after the 2004 elections.

42. In the judicial system, the total number (217) of magistrates and judges is broken down as indicated below:

(a) Supreme Court: 9 posts (comprising 2 women and 7 men);

(b) Superior courts: 36 posts (comprising 16 women and 20 men);

(c) Circuit and municipal courts: 217 posts (comprising 112 women and 105 men).

43. According to the above figures, men are a majority among holders of posts with a higher jurisdictional competence, while women are more numerous among holders of circuit and municipal court posts.

44. As a whole, the numbers of men and women holding jurisdictional posts in the Panamanian judicial system are significantly close.

## II. APPLICATION OF THE ARTICLES OF THE COVENANT

### Article 6

45. Panama's 1904 Constitution, first in the country's republican period, provided for capital punishment in the case of homicide committed with particular cruelty, at a time when appropriate establishments and actual penitentiaries did not yet exist.

46. Capital punishment was regulated by the Colombian criminal code of 1890, which was in force in Panama until 1916. Guided by the principle of the inviolability of the human being, act No. 2 of 22 August 1916 stipulated a maximum penalty of 20 years in prison.

47. Article 1 of the 1917 legislative act reforming the 1904 Constitution stipulated that no capital punishment should be carried out in Panama. The death penalty was thereby constitutionally abolished.

48. The Republic of Panama is party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aimed at abolishing capital punishment, which was adopted through act No. 23 of 17 November 1992; and to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted through act No. 13 of 18 June 1991.

49. Guided by the long-standing principle of the inviolability of the human being, Panama has supported, in many international fora, initiatives for the abolition of the capital punishment worldwide.

50. There are no legislative or constitutional proposals or plans for introducing capital punishment in Panama.

51. The State of Panama considers that the protection of the right to life and the other fundamental rights enshrined in ICCPR must be supplemented, at the domestic level, with the standards complementing current provisions which primarily establish:

(a) The indefeasibility of genocide and other crimes against humanity;

(b) The characterization of the offence of forced disappearance of persons.

52. Draft legislation to that effect has been presented to the National Assembly and is being discussed as part of the current debate on reforming the criminal code and the criminal procedure code.

53. Through resolution No. 22 of 2 March 2005, the Office of the Attorney General of the Nation created the post of a special pre-trial proceedings officer for investigation into forced disappearance cases. That officer, part of the Public Prosecutor's Department, shall submit to the Prosecutor General periodic progress reports on each case.

### A. Right to life in the context of the treatment and prevention of contagion with human immunodeficiency virus (HIV) causing the acquired immunodeficiency syndrome (AIDS)

54. Every State must protect and guarantee the health of its population. That obligation implies the right to life. Accordingly, Panama has redoubled its efforts regarding the rights of persons affected by HIV or AIDS.

55. The Government has thus carried out a series of activities. Act No. 3, published in the Official Journal on 5 January 2000, contains comprehensive provisions on sexually transmitted infections (STIs) and HIV/AIDS, characterizing, in particular, the occurrence of STIs/HIV/AIDS as a "problem for the State and the nation".

56. Panama has acceded to the United Nations Millennium Declaration (General Assembly resolution 55/2), adopted at the Millennium Summit, where, showing that the world was finally aware of the proportions of the HIV/AIDS crisis, the world leaders made a commitment to halting, and beginning to reverse, by 2015, the spread of HIV/AIDS. In June 2001, Panama participated in the twenty-sixth special session of the General Assembly, convened to address the HIV/AIDS problem, and the First Vice-President of the Republic signed the Declaration of Commitment on HIV/AIDS.

57. Act No. 3 of January 2000 was regulated by executive decree No. 119; and the National AIDS Commission (CONASIDA), a permanent executive body with intra- and inter-institutional and inter-sectoral committees was set up under resolution No. 483 of November 2001 with a view to strengthening the National Programme.

58. Panama is a signatory to the Declaration of Heads of State and Government in support of measures for the treatment of the HIV/AIDS and to the Commitment to joint management and implementation of the programme for comprehensive care and accelerated access of the population to antiretroviral drugs (ARV).

59. Panama implements technical and administrative standards for the prevention of STIs and HIV/AIDS; epidemiologist monitoring norms; a guide for controlling occupational exposure to HIV, hepatitis B virus (HBV) and hepatitis C virus (HCV), and recommendations for post-exposure prophylaxis; biosafety standards for HIV prevention in dentistry; and a technical and administrative manual on standards and procedures for laboratories handling of HIV infections. Moreover, Panama incorporates the HIV/AIDS dimension into the technical and administrative standards and procedures of the programme for comprehensive health care for women.

60. Panama has developed a multi-sectoral strategic plan (PEM) for addressing STIs/HIV/AIDS in the period 2003-2007. The plan was formulated through the active participation of various social sectors and, in particular, NGOs, people living with HIV/AIDS, religious institutions, trade unions, multinational cooperation bodies and the Government sector, led by the Ministry of Health (MINSA) national programme against STIs/HIV/AIDS.

61. The above strategic plan is crucial because it enables Panama to adapt to changing HIV/AIDS-related conditions by making use of existing strengths, taking advantage of opportunities, considering potential obstacles and threats and thereby designing interventions

for educing the effect of the epidemic on the persons affected or infected and for enhancing the effectiveness of preventive action. The plan allows to address specific situations through appropriately devised strategies that are adaptable to new developments and realistic in view of vailable resources.

62. The above plan serves as a guide for Government, private, NGO and other programme executives, enabling them to plan and implement activities aimed at reducing HIV infections within a five-year period (2003-2007). Four strategic objectives have been identified to orient the fight against AIDS in Panama: Reducing the prevalence of STIs/HIV/AIDS; enhancing comprehensive health care and the quality of life of STI/HIV/AIDS patients; building inter-sectoral response capacities; and increasing the number of activities aimed at defending the human rights of the patients in question.

63. Each strategic objective is associated with guidelines for attaining it and with a series of indicators for assessing effectiveness. This approach constitutes a valuable guide for the operational planning of activities in any sector involved in combating STIs/HIV/AIDS. (5)

64. The protection of the human rights and fundamental freedoms of persons affected by HIV/AIDS is not only an obligation based on humanitarian principles and international and national legal standards, but also good public health policy because the prevention of stigmatization and discrimination of patients helps to identify contagion, treat the disease and prevent the infection of more people.

65. The Ombudsman's Office of the Republic of Panama implements the Programme for the promotion and protection of the rights of persons with HIV/AIDS through a unit set up to that purpose, seeking to encourage and strengthen - as a means for prevention - the defence of those persons' right to equality, justice and respect. The overall objective consists in raising awareness in Government institutions, civil society and the population, providing them with information and training in respect of HIV/AIDS, its repercussions on the human rights of the persons affected, and seeking to reduce and eliminate the stigma and prejudices accompanying the infection. The specific objectives consist in raising awareness and generally disseminating information among the population regarding the HIV/AIDS pandemic (education-prevention); training the staff in charge of health care for persons with HIV/AIDS in human rights; documenting and disseminating the experience and results obtained; focusing on vulnerable groups, such as children, women, elderly people, indigenous settlements, prison inmates and undeclared sex workers; and ensuring monitoring, follow-up and evaluation.

66. According to information made available by the United Nations Children's Fund (UNICEF), HIV prevalence among persons aged 15 to 49 in Panama (with a population slightly over 3.2 million) was 0.9 per cent in 2006, a rate corresponding to 18,282 people (6). According to other sources, however, the number of affected persons (ranging between 20,000 and 30,000) may be as high as 26,000. (7)

67. In September 2006, the cumulative total of AIDS cases registered in the country amounted to 7,931 (5,952 men and 1,979 women), of which 322 were paediatric (involving patients under 15). Panama has the third highest HIV/AIDS prevalence rate (20.9 in Central America (after Honduras and Guatemala). (8)

68. According to MINSA, of the reported cases, 69.0 per cent occurred by sexual transmission, 0.2 per cent by blood transfusion, 3.6 per cent by perinatal transmission (from mother to child) and 26 per cent by transmission of an unspecified form. By deduction, this 26 per cent margin may be ascribed to sexual transmission, thereby raising the total respective rate to 94.4 per cent. (9) Prevalence among pregnant women is estimated at 0.7 per cent. (10) Of the approximately 71,000 women giving birth every year, it is estimated that 1,000 live with HIV/AIDS. (11) In September 2005, the total number of women registered as living with HIV/AIDS was 1,979 and the men/women ratio was 3:1. (12)

69. With a 72 per cent lethality rate among AIDS patients, (13) approximately three out of every four individuals having developed AIDS have died, leaving many children with one or no parent. In 2001, there were in the country 8,100 orphans as a result of HIV/AIDS. (14). According to projections drawn up by UNICEF, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United States Agency for International Development (USAID), this figure may reach 13,000 by 2010. (15)

70. According to the Office of the Comptroller General of the Republic, AIDS is the seventh most important cause of death in the country, with a death rate of 12.92 persons per 100,000 inhabitants. The three urban areas with the highest AIDS prevalence are Colón (50.9 per cent of cases), the Panama City metropolitan area (42.6 per cent) and the San Miguel to district (31.6 per cent). (16)

71. Many years of experience in combating the HIV/AIDS epidemic have shown that human rights promotion and protection are a key to preventing HIV transmission and reducing the effects of the infection. Facilitating the enjoyment of human rights and creating an environment conducive to their protection require measures ensuring that the authorities, the communities and civil society respect human rights and practice tolerance, compassion and solidarity. Evidently, establishing a regulatory framework to address HIV/AIDS is directly related to fundamental rights and public health policies, which are matters falling exclusively within the legislative sphere.

72. Accordingly, act No. 3 of 5 January 2000, with comprehensive provisions on STIs, HIV and AIDS, is to be implemented without prejudice to the rights of persons directly or indirectly affected by the infections in question.

73. In such cases, the Government, through the Ministry of Foreign Affairs, works unceasingly to make appropriate remedies available to victims and seeks in particular:

(a) To raise the media operators awareness of the importance of coordinated, ongoing prevention and human rights campaigns;

(b) To manage the increase in the number of helpline units providing accurate information on HIV/AIDS;

(c) To require confidentiality and the provision of guidance in administering an HIV/AIDS detection test;

(d) To train labour inspectors, labour judges and workers' and employers' representatives in protecting the rights of persons living with HIV/AIDS in the face of the various forms of discrimination at the workplace;

(e) To require amendments to the public health code with a view to preventing, and adopting measures against, STIs;

(f) To ensure that economic development regulations include labour reintegration programmes or the creation of "employment exchanges" for persons living with HIV/AIDS (or other special measures for including such persons in the labour market);

(g) To make specific State budget allocations to all institutional budgets for relevant prevention, promotion and care;

(h) To promote CONASIDA as an autonomous permanent body with a budget allocation for supervision, monitoring and evaluation mechanisms;

(i) To amend the law on procurement by the Social Security Fund;

(j) To ensure that the allocation of funds for HIV/AIDS is subject to systematic independent audits and to a supervision and monitoring mechanism;

(k) To introduce amendments to the law on STIs/HIV/AIDS;

(l) To introduce amendments to act No. 3 of 5 January 2000;

(m) To modernize the epidemiological monitoring system from a human rights perspective;

(n) To strengthen the role played by MINSA as guarantor of population's health by prevention;

(o) To draw up internal programmes aimed at fulfilling responsibilities under the law on STIs/HIV/AIDS;

(p) To ensure compliance with the international agreements signed by the country with regard to HIV/AIDS.

74. The promotion of the rights in question and the provision of general and specialized information in that regard are carried out on the basis of the following guidelines:

(a) Continuing to disseminate information on act No. 3 of 2000;

(b) Raising awareness in Government bodies of the importance of HIV/AIDS prevention and treatment;

(c) Disseminating information on preventive action against the infection as part of the essential task of public health units;

(d) Conducting HIV/AIDS awareness campaigns among the entire population;

(e) Building partnerships with civil society for promoting human rights;

(f) Enhancing freedom to use condoms by providing relevant information;

(g) Introducing a human rights perspective, including reproductive and sexual rights, in the treatment of prison inmates.

**Article 7**

75. Torture is defined as the act of intentionally causing physical or psychological damage in order to obtain from a victim or a third person a confession or information or as revenge for a deed committed by the victim or third person.

76. Acts of torture constitute a criminal attempt to physically and mentally destroy a human being. They are unjustifiable on any grounds, ideology or higher interest. A society that tolerates torture may not claim to respect human rights. Torture is expressly prohibited by national and international human rights instruments.

77. The Republic of Panama rejects all forms of torture and inhuman, cruel or degrading treatment. Strict compliance with these standards is ensured by the application of the relevant provisions contained in the following instruments:

(a) The Constitution of the Republic of Panama, which includes, in articles 4 and 17, specific provisions for the protection of human rights;

(b) The Universal Declaration of Human Rights;

(c) The American Convention on Human Rights;

(d) Act No. 14 of 28 October 1976, ratifying ICCPR;

(e) Act No. 15 of 28 October 1976, ratifying the Optional Protocol to ICCPR;

(f) Act No. 15 of 28 October 1977, ratifying ACHR;

(g) Act No. 5 of 16 June 1987, ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and act No. 12 of 18 June 1991, ratifying the Inter-American Convention to prevent and Punish Torture);

(h) Act No. 23 of 17 November 1992 (Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty), which contains provisions for the protection of human rights and their application to all residents in the country;

(i) Act No. 55 of 30 July 2003, reorganizing the prison system;

(j) Criminal code;

(k) Executive decree No. 393 of 2005, regulating the prison system.

78. Criminal code article 160 characterizes torture as follows: "A civil servant subjecting a detainee to undue hardship or harassment shall be punished with imprisonment of 6 to 20 months. If the act consists of torture, degrading punishment or gratuitous humiliation or measures, the sentence shall be 2 to 5 years in prison". Accordingly, where an administrative investigation finds that such undue acts have been perpetrated, steps are taken for appropriate action, such as discharge from office and appropriate criminal proceedings.

79. Acts offensive to human dignity are highly probable in prisons, as offences committed against detainees by the personnel responsible for attending to their needs and security.

80. Due consideration is given to the fact that prison inmates are only deprived of the freedom to move and, as human beings, enjoy the same rights as those who are not in that condition.

81. The General Directorate of the Prison System (DGSP) operates on the basis of the principles of security, rehabilitation and social protection laid down in article 28 of the Constitution. It is therefore incumbent on DGSP to protect the life, physical integrity and comprehensive health of imprisoned men and women. Act No. 55 of 30 July 2003, reorganizing the prison system, and executive decree No. 393 of 25 July 2005, regulating the prison system, constitute the regulatory instruments for the treatment of prison inmates.

82. The legislation in question provides for procedures for the separation of inmates; the treatment of those detained pending investigation and the convicts; the transfer of detainees from one jail to another; the processing of requests, complaints and appeals that the inmates wish to file with the authorities; and the granting of, inter alia, release on parole, special permits and visits.

83. The National Police, which currently assigns officers to prisons, operates a Police training centre (CECAPOL) which provided training in applying human rights and humanitarian principles to police duties. Such programmes have been attended by 280 police officers.

84. The Doctor Justo Arosemena higher education centre organizes one-semester studies on human rights for all students envisaging a law enforcement career. As part of the second semester of police officer training, the Presidente Belisario Porras police academy offers 25 hours of instruction on the human rights of the Panamanian population, ensuring that the 500 police officers who are graduated are provided with basic knowledge in that area.

85. Moreover, staff officers are offered 48 hours of theoretical and applied courses on human rights and international humanitarian law, while 15 hours of advanced human rights teaching are available to officers of a certain rank.

86. Nevertheless, constraints such as an insufficient budget and, consequently, an inadequate prison infrastructure, compounded by gang problems, restrict the implementation of the above principles.

87. In relation to the treatment of prisoners and in strict compliance with article 40 of act No. 55 of 30 July 2006, officers, before taking up their duties in some of the prisons staffed by the National Police, receive one month's training in prison-related matters. This also applies to prison guards, who must pass a preliminary three-to-six-month training and practice course. The human resources department organizes initial and continuous training programmes for all civil servants employed in the prison system.

**Article 8**

88. As stated in article 4 of the Universal Declaration of Human Rights, no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

89. Panamanian legislation prohibits forced labour as a form of punishment.

90. Panama adopted act No. 28 of 1 August 2005, amending article 7 of the criminal code and adding to it, under book I, title III, a tenth chapter entitled "Commutation of a prison sentence to study or work", under which detainees may voluntarily render services to the community and have their sentence commuted in exchange.

91. A penitentiary used to exist on the island of Coiba, considered as a penal colony. Convicts were sent there subject to previous evaluation and joined rehabilitation programmes comprising self-managed, agriculture and cattle raising projects ultimately beneficial to the detainees. However, that penal colony was dismantled through act No. 44 of 26 September 2007, creating the Coiba National Park.

92. The National Directorate of Migration and Naturalization (DNMN) in the Ministry of the Interior and Justice ensures that aliens detained in Panama are not forced to carry out labour-related activities.

93 Pursuant to resolution No. 4260 of 8 August 2002 of DNMN, issuance of a work permit approved by DNMN is a prerequisite to granting a visa related to the exercise of a remunerated activity.

94. Decree-law No. 16 of 1960 provides for the classification of aliens into tourists, transients, travellers in transit, direct transit travellers, visitors and immigrants.

95. Article 1 of the above decree-law defines transients as persons arriving in the territory for reasons other than recreation and sightseeing and with the intention of leaving within three months.

96. Under article 16 of the decree-law, transients may not engage in remunerated activities, unless they are, inter alia, artists, sportspersons, impresarios and cultural, scientific or other celebrities. To exercise their activities they must obtain a work permit from the Ministry of Labour and Workforce Development.

97. Article 17 of the same text imposes fines on aliens and employers who fail to comply with the above key prerequisite to granting a visa.

98. To grant a transient visa, DNMN thoroughly verifies that the following required documents exist:

(a) Valid passport and legal entry;

(b) Travel ticket open for one year;

(c) Note indicating the premises or company concerned by the contract;

(d) Work contract registered with the General Directorate of Labour in the Ministry of Labour and Workforce Development;

(e) Work permit issued by the Ministry of Labour and Workforce Development, a prerequisite for obtaining the visa;

(f) Medical control (HIV and Venereal Disease Research Laboratory (VDRL) tests);

(g) Police record;

(h) Passport size photographs;

(i) Panama Balboa (PAB) 100 check to the order of the National Treasury;

(j) PAB 250 check to the order of the Ministry of the Interior and Justice.

99. Inspections in the units concerned have resumed in recent months in order to reinforce control and to verify, through individual interviews, that aliens working in the premises meet the requirements and are not victims of sexual operation or trafficking in persons. Such verifications would be impossible if the persons in question worked illegally and therefore unprotected against abuse.

100. DNMN rigorously checks whether alien young women working in nightclubs comply with the above provisions and undergo the required medical checks.

101. Moreover, executive decree No. 17 of 11 May 1999, regulating articles 17 and 18 of Government decree No. 252 of 30 December 1971, establishes work permit categories and respective requirements and procedures, including for transients.

102. Where the Ministry of Labour and Workforce Development considers it necessary, the issue of a work permit is preceded by an inspection or an interview with the alien or the employer for purposes of repression of any offence violating the provisions of article 8 of ICCPR.

## Article 9

103. Article 21 of the Constitution of Panama stipulates that no one may be deprived of liberty except by written order from a competent authority, issued in accordance with legal formalities and on grounds previously defined by law. No one may be detained for more than 24 hours without being placed under the orders of the competent authority.

104. Moreover, all persons placed under arrest must be immediately informed, in an understandable manner, of the reasons for their arrest and of their constitutional and legal rights.

105. Under article 220 (4) of the Constitution, the Public Prosecutor's Department must prosecute any offences and violations of constitutional or legal provisions.

106. Under article 220 of the Constitution, the Public Prosecutor's Department must promote compliance with and enforcement of the laws, court decisions and administrative orders; and paragraph 134 of article 347 obliges the staff of the Public Prosecutor's Department to visit, in prison, the detainees who are under their responsibility.

107. The total duration of detention pending investigation varies with the length of the investigation. Investigation, and therefore the judicial process, are delayed for a considerable number of detainees. Existing mechanisms and measures adopted for reducing the length of detention pending investigation include so-called preventive measures and bail. Relatively recently, the Public Prosecutor's Department has been conducting studies and tests for the introduction of an electronic bracelet that would allow a detainee to stay at home during the investigation. Further information regarding this method is provided in subsequent paragraphs.

108. As from the moment of arrest, any detainee is entitled to designate a lawyer or require an officially appointed defence counsel, with whom the detainee must be able to communicate freely; and may refuse to make any statement until represented by a duly designated attorney.

109. With regard to offences carrying a minimum sentence of two years in prison, custody is an option. To a certain extent, that has contributed to the high occupancy rate of detention centres.

110. Doubtlessly, problems related to that rate significantly affect the social rehabilitation of detainees. Accordingly, improvement projects compatible with constitutional guarantees are under way.

111. Article 2129 of the judicial procedure code reads as follows:

> "… Detention pending investigation in prison establishments may be ordered only when all other measures are inadequate…."

112. The Public Prosecutor's Department, aware of its duty to ensure compliance with the Constitution and the law and to ensure the effectiveness of any preventive measures that it imposes under the above article, promoted the initiative known as the "electronic monitoring bracelet pilot project". The instrument in question is expected to reinforce the preventive measure of house arrest for persons placed under the orders of the Public Prosecutor's Department. At the start of the project, the detainees in question accounted for 22.12 per cent of the entire prison population. The objective is to eventually introduce this measure to convicted offenders.

113. The main parameters governing the above project are as follows:

(a) The Public Prosecutor's Department, as project leader, is to participate actively in the implementation of the new method.

(b) The detainee is to ignore the range of the equipment installed at his/her home and may only know the area of confinement.

(c) The criteria for the use of the bracelet are to be improved.

(d) The procedure is to be monitored by social workers and psychologists who should assess the response of the family.

114. Resolution No. 065-2005 of 1 September 2005, implemented the "telematic locating system" for the enforcement of preventive measures with a view to supporting the administration of justice and the protection of human rights in a bid to attenuate overcrowding in detention facilities.

115. The project was launched with eight detainees in the districts of Panama City and San Miguelito for a period of three months, starting on 7 September 2005.

116. To be eligible for the system, detainees must be:

(a) First-time presumed offenders;

(b) Ready to participate voluntarily;

(c) Aware of the obligations that the system implies;

(d) Accused of offences that do not admit of release on bail.

117. The method is expected to be further applied to:

(a) Persons in detention pending investigation;

(b) Persons on parole;

(c) Detainees with work and study permits;

(d) Patients in the terminal stage of an illness;

(e) Pregnant women.

118. The following table indicates the advantages of the bracelet method compared to actual incarceration:

| Aspect | Bracelet | Detention facility |
|---|---|---|
| **Overcrowding** | It is inversely proportional to the number of beneficiaries. | It deteriorates with time in jail. |
| **Human rights** | Human rights requirements are met. | Human rights are violated. |
| **Costs** | They are lower. | They are three times higher. Also, the possibility of detaining an innocent has an incalculable cost. |
| **Earnings** | There is a greater possibility for earnings, provided the detainee can work. | There is a smaller possibility for earnings. |
| **Reintegration** | The detainee is secluded from society. | The prison experience is traumatic. |
| **Education** | The detainee has access to the education system. | The detainee is far from the education system |

119. Through restriction in one's own home or room or in a specific health facility within the appropriate area of jurisdiction, use of the electronic bracelet allows for better monitoring of compliance with preventive measures.

120. Case studies regarding the use of the electronic bracelet have led to the following recommendations:

(a) The method should particularly be used on detainees having the possibility to work.

(b) The method should be used as a reinforcement of house arrest, particularly for monitoring purposes in cases of work or study permits or medical treatment.

(c) Where conditions change, the user should be subject to appropriate restrictions and perhaps taken off the system in question.

(d) The detainee should ignore the range of the bracelet.

121. In the project's incipient stage, use of the bracelet was envisaged in the case of persons detained in their home or room or in a health facility under article 2127 (d) of the judicial procedure code.

122. The overall objective of the project is to provide the judicial system, in relation to less serious offences, with a preventive measures instrument other than detention pending investigation, provided that the detainee meets the appropriate requirements.

123. The project's specific objectives include:

(a) Largely replacing detention pending investigation;

(b) Achieving a high level of effectiveness in the use of electronic bracelets;

(c) Reducing the prison population by taking charge of less serious offenders.

124. To join the programme, offenders:

(a) Should not necessarily have been condemned;

(b) Should be detained in relation to a case investigated by the Public Prosecutor's Department;

(c) May be either in detention pending investigation, or on parole, or on a work or study permit, or patients in the terminal stage of an illness, or pregnant women;

(d) May be, inter alia, defendants in detention;

(e) May be persons subject to a measure requiring reinforcement.

125. The overall technical criterion is that the bracelet may be used on persons placed under the orders of the Public Prosecutor's Department, where the type of offence justifies preventive measures.

126. Particular technical criteria for the use of the bracelet consist in the following descriptions:

(a) Ill inmates who may not receive appropriate medical treatment in prison;

(b) Detained pregnant women and mothers with up to 10-month old children;

(c) First-time offenders;

(d) Persons granted house arrest;

(e) Persons able, and having the opportunity, to work.

127. Eligible offences are:

(a) Personal injuries resulting from the perpetration of another offence;

(b) Theft;

(c) Possession of up to 500 g of illegal drugs;

(d) Possession of a firearm;

(e) Lascivious acts whose victim is not underage;

(f) Offences related to public documents;

(g) Embezzlement of an amount not exceeding PAB 1,000;

(h) Intra-family violence involving change of domicile;

(i) Contempt.

128. Use of the electronic bracelet allows persons who otherwise would remain in prison to enjoy a limited freedom that enables them to engage in home-based activities satisfying their basic needs, including the possibility to work for a living, while complying with the restrictions imposed. The measure in question is also a way of attenuating overcrowding in prisons.

129. Through the above measure, viewed as a positive alternative, the Public Prosecutor's Department seeks to contribute to the solution of the tangible problem of prison overcrowding. It is therefore hoped that this project will be further developed.

## Article 10

130. The minimum requirements that Panama applies in respect of the treatment of detainees were established in 1957.

### National Directorate of the Prison System

131. The General Directorate of the Prison System (DGSP), created by executive decree No. 139 of 16 June 1999, is an administrative unit of the Ministry of the Interior and Justice of the Republic of Panama. It is responsible for planning, organizing, managing, coordinating, supervising, administrating and operating the country's existing and future penitentiary facilities of all types.

132. DGSP is based on the principles of security, rehabilitation and social defence, in accordance with article 28 of the Constitution.

133. The object of DGSP activities, governed by act No. 55 of 30 July 2003, consists in the administration of the country's detention facilities and the development of rehabilitation and reintegration programmes for incarcerated men and women.

134. The adoption of the above act was one of the main goals achieved in 2003. The text was thoroughly studied nationwide by the various sectors interested in a reorganization of the prison system.

135. The above act lays the legal basis for a comprehensive and sustainable development of the detainee rehabilitation and reintegration programmes promoted by DGSP; and for career development in the institutions concerned, thereby offering occupational stability to the civil servants in question.

136. Chapter VI of act No. 55 of 30 July 2003, reorganizing the prison system, lays down disciplinary rules regarding the detainees, with a view to ensuring security and well ordered and peaceful cohabitation in detention facilities, in the interest of social reintegration. Order and discipline are resolutely maintained, but without imposing any restrictions beyond those that are necessary or affect the detainees' health or dignity. Article 73 of the act prohibits all disciplinary measures constituting cruel or degrading treatment, including corporal punishment, leaving without food, confinement in dark cells, use of handcuffs, shackles or chains as means of punishment, and any other procedure prejudicial to the human dignity of the detainees.

137. Measures are taken to ensure that detainees are fully aware of possible grounds for disciplinary sanctions which, subject to the provisions of the act, may be more or less severe and are meted out by the director of the facility, based on a report by the technical board, chaired by the director or assistant director and including an interdisciplinary team working in the facility. The board recommends what sanctions should be imposed and when. Before imposition of the sanctions, the detainee must be informed and may argue in his/her defence.

138. Panama's prison system has undergone many transformations. In republican times, the unit in charge of the system has been under the jurisdiction of the Department of the interior, justice and incarceration centres. The detention centres were located in underground facilities at the Chiriquí prison in the Province of Panama and in police offices at provincial headquarters.

139. An effort to improve Panama's prison system and the treatment of inmates began with decree No. 15 of 29 January 1920, providing for the creation and provisional organization of a penal colony on the island of Coiba. That initiative was made definitive through decree No. 83 of 1 June 1925, reorganizing the facility and officially establishing the penal colony in question.

140. The Coiba penal colony also marked the beginning of an effort to draw up criteria for the classification of the prison population of Panama. The inmates chosen to form the penal colony were selected among those prisoners, held in provincial police headquarters and in the Chiriquí prison in the Province of Panama, who still had four months to serve on the date of their transfer and among all those sentenced for ordinary offences to more than four months of hard labour, penal servitude, preventive detention, exile, confinement or imprisonment.

141. The penal colony population engaged in farming or any other type of work undertaken in the colony. A remuneration system was established to ensure that, after serving their sentence, the offenders would have enough money to make a new start as free men.

142. Attention began to be paid to ensuring that inmates were detained in areas offering security commensurate with the particular characteristics and length of their sentence. By its location, the Coiba colony came to be in a sense a *high security penitentiary*, where all the necessary measures were taken for the detainees' social reintegration and the protection of their human rights.

143. Accordingly, the Chiriquí prison and the jails at provincial headquarters were considered as medium and low security penitentiaries and centres for detention pending investigation.

144. In view of the operation of the Coiba penal colony, decrees were promulgated in order to establish general criteria for the classification of the detainees, as part of their right to a decent life in prison, drawing up limits to exclude any unnecessary hardship to persons detained pending investigation or serving a prison sentence. In that context and in order to ensure the edification of detainees, decree No. 112 of 19 June 1941 created the post of professor of morals and religion in DGSP. Since most of the detainees were Catholic, the services of a priest of that denomination where necessary.

145. With a view to further improving the prison system, particularly with regard to human rights, act No. 2 of 28 January 1921 provided for the construction of model jails in the cities of Panama and Colón for detainees sentenced or pending investigation, whose incarceration

had been ordered by the courts, convicts or persons arrested by the police under criminal or administrative provisions. The act provided for dividing jails into separate sections for adults, women and minors. The City of Panama prison would be built as a model jail, reformatory for delinquent women and reform school for minors. The construction and regulations of the jail were to reflect the latest advances in the area of prison organization and administration.

146. Attention began to be paid to ensuring that inmates were detained in areas offering security commensurate with the particular characteristics and length of their sentence.

147. Act No. 2 of 28 January 1921 provided for the construction of model jails in the cities of Panama and Colón for detainees sentenced or pending investigation, whose incarceration had been ordered by the courts, convicts or persons arrested by the police under criminal or administrative provisions. The act provided for dividing jails into separate sections for adults, women and minors. The City of Panama prison would be built as a model jail, reformatory for delinquent women and reform school for minors.

148. Act No. 87 of 1 July 1941 established provisions for prisons and reformatory institutions, stating that such facilities should serve for the confinement of prisoners and be safe places for expiation, not places for cruel punishment. Accordingly, any hardship that was not necessary for the detention and reform of the prisoners was prohibited.

149. Under that act, the ultimate role of reformatory institutions was to improve the moral and psychological condition of the detained minors and women, enhance their education and help them develop a predilection for work. Moreover, the act provided for the construction of Cárcel Modelo ("model jail") in the City of Panama.

150. The immediate precursor of DGSP was the former Department of Correctional Affairs, answerable to the Ministry of the Interior and Justice and created through decree No. 467 of 22 July 1942. Although it had the same responsibilities as DGSP today, that department was different on some points regarding its design and structure.

**Directors of the Department of Correctional Affairs**

| Name | Period | Name | Period |
|---|---|---|---|
| Francisco Cornejo | 1942-1945 | José A. Denis | 1976-1979 |
| Alejandro Cajar | 1945-1946 | Merardo Castrellón | 1979-1982 |
| Guillermo A. Zurita | 1946-1948 | José A. Perez | 1982-1991 |
| Antonio Donato | 1949-1952 | Nilka de Saenz | 1991-1994 |
| Carlos A. Clement | 1953-1954 | Kaliope Tsimogianis | 1994-1994 |
| Pedro Julio Pérez | 1955-1960 | Enrique Mon Pinzón | 1995-1996 |
| Andrés Avelino Jaén | 1960-1967 | Sandra Osorio | 1996-1998 |
| Jaime Bell | 1968-1970 | Marta Stanziola | 1998-1999 |
| Jorge Centeno | 1971-1973 | Maritza Griffo | 1999-1999 |
| Alberto Luis Tuñon | 1973-1976 | Concepción Corro de Tello | 1999-2004 |

151. DGSP was formed as a natural consequence of the modernization process of the prison system since 1996. By that year, the administrative capacity of the Department of Correctional Affairs had diminished for various significant reasons. At the same time, given a detainee

population of 6,750 housed in 53 prisons, provisional detention centres and other facilities having a total capacity for 5,723 inmates, overcrowding expectably led to such problems as brawls, murders, diseases and difficulties related to prisoner treatment.

152. Furthermore, according to international consultants, the Department of Correctional Affairs "did not display an efficient organization" but "was plagued by extensive confusion regarding the various duties and responsibilities". In fact, the Department was organized along top-down lines of command and all decisions emanated from the national director, producing bottlenecks in the flow of work and virtually precluding any accountability at other hierarchical levels.

153. In the various facilities, decision making was also centralized and the directors faced similar bottlenecks. As a result, national policies were not followed up, while isolated practices sprang up in individual penitentiaries. Accordingly, when a director changed, this generally meant the introduction of a radically different type of management, with repercussions for the treatment of the detainees and even for the evolution of the system as a whole.

154. In November 1996, the Spanish Government presented to the Panamanian Government an offer of technical and financial assistance for improving the prison system, in the form of a comprehensive project entitled "Assistance for the system of sentence serving and prisoner rehabilitation" launched under a cooperation agreement between UNDP and Spain. The project comprised activities coordinated with the Public Prosecutor's Department, the judicial system and the prison administration units in the Ministry of Interior and Justice.

155. The ultimate objectives of the project consisted in encouraging judges to reduce the use of sentences involving detention, persuading citizens that such sentences were not necessary in cases of minor or non-dangerous offences, and revising all legislation on the serving of sentences. With respect to prisons, the objectives comprised adequate training of the personnel, establishment of a new organizational culture, improvement of the detention centres, introduction of programmes aimed at classifying the convicts and the detainees pending investigation, installation of workshops and production equipment, and improvement of the prison infrastructure.

156. In the light of these objectives, the Spanish and Panamanian Governments developed a plan of work comprising the following nine points or projects for the year 1997:

(a) Computerization and strengthening of the central units of the National Directorate of Correctional Affairs, whose main task is to ensure an efficient and modern operational structure, properly equipped with the computer resources crucial to a successful comprehensive reform;

(b) Separation of detainees serving administrative sentences from those sentenced by a court of justice, on the basis of minimum criteria for the classification of detainees;

(c) Launching of a pilot project involving judicial control of prison operations with a view to introducing direct judicial control mechanism in that area in order to ensure the prison system's compliance with law and the protection of the human rights of detainees;

(d) Development of a primary health plan, mainly involving the diagnostic examination of inmates and the formulation of a health care programme based on an agreement with MINSA;

(e) Improvement and strengthening of communications between the judicial and the prison systems and of the means used to transport detainees, in order to ensure an easy flow of information and prevent bottlenecks and delays in the processing of cases;

(f) Implementation of the provisions of article 2544 of the judicial procedure code, mainly aimed at a system facilitating the detainees' personal communication with their spouses;

(g) Support for basic computerization of detention centres *La Joya, La Joyita, Centro Feminino de Panamá, Renacer* and *Tinajitas*, mainly through the acquisition of essential computer equipment in order to launch a process for the rationalization of tasks;

(h) Drawing up of standing rules or standard procedures for detention centres in order to establish a comprehensive framework for establishing, inter alia, records of proceedings, work procedures, duties and activity assignments;

(i) Formulating a plan to prevent overcrowding by providing training to the special magistrates (*corregidores*) and night judges, enhancing support for those released on parole and, in particular, promoting the use of non-prison measures as a judicial response to offences.

157. Of the above projects, those directly related to the Department of Correctional Affairs were launched in 1997. A start was made with the Department's computerization and the primary health plan, achieving a commendable level of implementation.

158. Special mention should be made of sub-project No. 2 under project No. 1, related to administrative capacity building in the Department of Correctional Affairs. The exercise in question marked the inception of DGSP and led to the disappearance of the earlier Department.

159. This specific project began with the training of civil servants in Spain from 14 to 30 July 1998. After an internship in the Spanish prison system, they formed in Panama a work party with a view to applying the knowledge acquired to the design and development of a new organizational structure.

160. The outcome of that work was a document submitted to the Ministry of the Interior and Justice in the middle of May 1999. The document comprised a general organizational chart for DGSP, organizational charts for the various divisions, a description of responsibilities and a list of posts. That structure was adopted through executive decree No. 139 of 16 June 1999, signed by the Minister of the Interior and Justice.

161. One feature of the new structure is the creation of five operational sections, covering respectively the sectors of health, administration, security, treatment and legal management. Measures taken in each of these areas have a direct impact on the detainees. Five thematic units

were subsequently set up to provide support for the work conducted in the prisons. Their activities affect directly the operational sections and indirectly the detainees.

162. Another feature of the new structure is the distinction between administrative responsibilities and technical work designed to facilitate management. The heads of section have strictly technical jurisdiction over the prison personnel in respect of the respective professional skills, such as, inter alia, medical or psychiatric care and social work. On the other hand, the directors of the facilities have administrative jurisdiction over the personnel and play a largely executive role. The proposed organizational chart is shown in the following diagram.

163. The above characteristics allow for a more effective use of human resources. As a result, the personnel has not increased significantly since 1999 despite disproportionate growth in the overall prison population, which in October 2001 ranged between 9,200 and 9,300 detainees. Moreover, despite clearly insufficient financial, material and structural resources, the new structure has proven dynamic enough to ensure the development and implementation of more reliable policies for the treatment of detainees.

164. Two years after adoption of the above system, a readjustment exercise is in progress in cooperation with the Office for institutional development with a view to realigning the structure with appropriate technical specifications and official terminology under the applicable national legislation.

165. Accusations for torture or abuse are presented by the director of the detention facility, the detainee or a member of his/her family to the competent authority or the Ombudsman's Office. The majority of such accusations are investigated and some have led to the dismissal and sentencing of the individuals accused.

166. The authorities in charge of Panama's prison system have noted the inadequacy of the current detainee accommodation infrastructure based on minimum requirements. The problem is compounded by insufficient budgets, abusive recourse to detention pending investigation, lack of personnel meeting the profiles required on the basis of the United Nations standard minimum rules for the treatment of the prisoners and judicial delays.

167. As part of the treatment of detainees, the above authorities endeavour to maintain social rehabilitation programmes ensuring that, as from their entry into a facility, detainees are systematically and individually evaluated, and gradually receive effective treatment aimed at their social reintegration.

168. Panama's prison system has undergone many changes, with obvious effects on its administrative structure, the personnel and the prison population, which in the last decade attained the level of 11.640 detainees (DGSP statistics, 4 September 2006).

169. Article 28 of the Constitution provides for a programme for training for prisoners in an occupation, permitting them to be usefully reintegrated into society; and for a special custody, protection and education system for underage detainees.

170. The same article clearly stipulates that the prison system shall be based on the principles of security, rehabilitation and social defence; and outlaws measures which may damage the physical, mental or moral integrity of incarcerated individuals.

171. Detention centres are periodically visited by the staff of the Ombudsman's Office, an institution responsible for monitoring - through official inspections - compliance with the human rights enshrined in the Constitution and in international conventions. These visits constitute a mechanism enabling detainees to express their concerns or complaints.

172. Moreover, the head of DGSP visits the detainees and interviews them on their detention conditions, the respect shown for their human rights and, inter alia, the treatment, food and health care that they receive.

173. As part of the process of humanitarian improvement of the prison system and in keeping with the guidelines enunciated in act No. 55 of 30 July 2003, reorganizing the prison system, and in executive decree No. 393 of 25 July 2005, regulating that act, the personnel in charge of detainees, including police officers and civilian guards, receives continuous training. The courses include human rights teaching, provided by staff of the Ombudsman's Office, and cover the new legislation. A book on that subject was distributed to all prison and national police personnel.

174. An informational brochure, prepared by the Ombudsman's Office, has been distributed to detainees. It describes the rights and obligations of inmates; the available prison programmes, such as permits for work or study, special leave permits and house or hospital arrest; and some articles of the criminal code.

175. Initiating the classification of the prison population, article 46 of act No. 55 of 30 July 2003 stipulates that detainees belonging to different categories shall be housed in different establishments or establishment sections, grouped by sex and age, criminal record (separating first-time offenders from recidivists), health conditions, grounds for detention and applicable treatment, with a view to avoiding epidemics, further corruption and promiscuity. To those ends, the following rules are applied:

(a) Men and women must be detained in different establishments and homosexuals must be housed in separate sections.

(b) Detainees pending investigation must be separated from inmates serving a sentence.

(c) Detainees incarcerated on family-related or administrative grounds must be housed in appropriate sections, separated from criminal offenders.

(d) Under no circumstances may the same penitentiary accommodate both men and women or adults and minors, except in the case of nursing mothers, who must be detained in appropriate sections.

(e) Prisoners with transmissible or mental diseases must be detained apart and attended in public hospitals or appropriate prison clinics.

176. Any disabilities and the typology of detainees are taken into account. The objective of prison rules is to ensure a well ordered and peaceful cohabitation conducive to the attainment of the aims stipulated by the law with regard both to detainees pending investigation and to convicts; and an effective treatment aimed at their social reintegration.

177. To ensure effectiveness, the detainee's social readjustment during his or her sentence must take the form of individual treatment proceeding in stages and meeting certain technical specifications, depending on the level of security (maximum, average or low) of the detention facility, the degree of confidence, and the stage applicable to the individual detainee (evaluation, diagnosis, prognosis or specialized treatment). Progressive treatment must make use of incentives and encouragements appropriate to each stage.

178. The separation of detainees deserves further discussion. Detainees are separated on the basis of security criteria and, often, in the light of their judicial status (namely, whether they are detained pending investigation or have been sentenced), health condition and criminal record (namely, whether they are first-time offenders or recidivists).

179. To ensure the separation of detainees pending investigation from convicts, the technical board of the given detention facility periodically reviews the status of the detainees. Moreover, they enjoy equal treatment, save for those who have been granted specific benefits provided for by the law, such as special permits, commutation of sentence or release on parole.

180. Detainees are informed of the benefits available under the law through relevant documentation provided by the Ombudsman's Office as part of its human rights information and protection activities.

181. Other benefits accorded to detainees include the opportunity to be informed about national events through the media (television, radio and newspapers) and the possibility to make telephone calls (in telephone booths in the recreation areas of the facility).

182. Act No. 55 of 30 July 2003 represents a step towards ensuring respect for the human rights of the detainees. Further work is under way with a view to attaining objectives based on ICCRP.

183. The State has made a financial investment in human resources by funding the training of the personnel responsible for prison security and administration in the human rights of detainees in order to strengthen respect for those rights.

184. Within its possibilities, the State has taken such positive measures as providing detention facilities with appropriately staffed clinics, contracting a company to provide suitable and nutritious food for the inmates and implementing measures over and above ensuring that prison sentences are served. There are plans for adopting a new criminal code humanizing the prison system through a change from inquisitorial to accusatorial procedures.

185. In view of the Covenant's provisions regarding the detainees' rehabilitation, not only have those principles been incorporated in act No. 55 of 30 July 2003, but also the State has effectively and efficiently ensured the social reintegration of detainees as well-prepared and law-abiding individuals.

186. The key to attaining the objectives of Panama's prison system is to offer detainees a suitable treatment during their sentence, productive work, training in useful skills, advanced learning and education in moral values.

187. The State has every reason to ensure the viability of the prison aid fund provided for in act No. 55 of 30 July 2003, as an instrument for assisting and following up on detainees or parole beneficiaries.

**Article 11**

188. The Constitution of Panama stipulates that no one may be deprived of liberty except by written order from a competent authority, issued in accordance with legal formalities, and on grounds previously defined by law, but the same article further states that there shall be no imprisonment, detention or arrest for debts or strictly civil obligations.

189. Articles 30 and 31 of the Constitution provide that there shall be no confiscation of property and only those acts shall be punished which have been declared punishable by law antedating their perpetration, and exactly applicable to the imputed act.

190. Accordingly, no prison sentence shall be imposed for debts or a contractual obligation, provided that the perpetration of an offence is not thereby caused.

**Article 12**

191. Article 37 of the Constitution of Panama provides that every person may travel freely throughout the national territory and change domicile or residence without restrictions other than those which the transit, fiscal, health and migration laws may prescribe.

192. Article 17 the Constitution provides that the authorities shall protect the life, honour and property of all nationals, wherever they may be, and of aliens who may be under their jurisdiction", while article 19 provides that there shall be no privileges or discrimination by reason of race.

193. Moreover, article 20 of the Constitution provides for equality of nationals and aliens before the law but specifies that, for exceptional reasons related to employment, health, morality, public security and the national economy, the law may subject aliens to special conditions or deny the exercise of certain activities to aliens in general.

194. Nationals and aliens are equal before the law inasmuch as they all have the right to establish their domicile at the location of their preference, without any restrictions on the part of the authorities other than those related to respect for the right to private property.

195. The earliest official regulations regarding migration management were adopted in 1960, when the Department of Migration was set up as a unit in the Ministry of Foreign Affairs through decree-law No. 16 of 30 June 1960.

196. Decree-law No. 38 of 29 September 1966 created the Department of Migration and Naturalization in the Ministry of the Interior and Justice. New rules established the structures and

responsibilities necessary for supporting and implementing provisions that had been adopted earlier.

197. In the 1990s, efforts were made to modify the organizational structure of the Department but it was only under act No. 47 of 31 August 1999 that changes were introduced, upgrading the unit to national directorate status, still in the Ministry of the Interior and Justice. Through the new regulations, the Government provided the unit with a more functional operational structure in keeping with the programmes and activities currently carried out.

198. Decree-law No. 16 of 30 June 1960 is still the main legislative text in force with regard to migration. Additionally, various other provisions have been adopted, forming a set of regulations that govern the stay of aliens subject to various visas.

199. Regarding workers' migration, executive decree No. 17 of 11 May 1999 establishes categories of work permits, respective requirements and the procedures through which the Ministry of Labour and Workforce Development may issue work permits to alien workers, including those characterized as transients.

200. The above review shows that the provisions on migration did not change in the 1990s. Act No. 47 of 1999 did not provide for any comprehensive reform but only introduced specific modifications, regarding, for instance, visas for transients and a classification including the category of artists working in nightclubs.

201. The legislators' aim, therefore, has been to ensure that the State should exercise more effective control in order to protect the life and rights of aliens engaged in the activity in question.

202. Various international instruments ratified in the 1990s were aimed at preventing certain types of offences, such as trafficking in persons, particularly minors.

203. These instruments include the Convention on the Rights of the Child (ratified in 1990), the Convention on the Civil Aspects of International Child Abduction (ratified in 1993) and the Inter-American Convention on International Traffic in Minors (ratified in 1998).

204. Act No. 38 of 31 July 2000, establishing the statute of the Office of the Government Prosecutor, provides for comprehensive administrative procedures constituting progress in respect of access to justice, since, as previously mentioned, legislation on migration dates back to 1960 and the act in question fills gaps with regard to contestation and other types of recourse. Inter alia, that act lays down relevant administrative principles, providing for repeal of acts, administrative proceedings, presentation of requests, consultations, complaints and accusations, incidents, impediments, challenges and administrative remedies.

205. As part of changes introduced in relation to migration in the new century, the Ministry of the Interior and Justice decided to provide DNMN with a more functional operational structure in keeping with the programmes and activities currently carried out. In that connection, the updating of the organizational and operational manual was planned in 2001.

206. The above restructuring aims at enhancing responsiveness and transparency in providing the services stipulated by the law and improving administrative management in the unit as a whole, in line with the new global trends characteristic of the new century.

207. Executive decree No. 52 of 20 February 2003 addresses various issues. Inter alia, it lays down implementation details regarding the available visas and permits, regulates various matters related to earlier legislation and provides for new types of visas and permits.

**Migration legislation regarding sex-related offences**

208. In order to align national legislation with the principles and rights enshrined in international human rights instruments, act No. 16 of 31 of March 2004 was adopted with a view to protecting the rights of victims of sexual offences.

209. The provisions in question establishing mechanisms for response through Government bodies and constitute an important step forward in the prevention and repression of trafficking in persons.

210. In parallel with measures taken against trafficking in persons, the United Nations Convention against Transnational Organized Crime was ratified and the protocols complementing it, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, were adopted through act No. 23 of 7 July 2004.

211. Moreover, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour were adopted in 2000.

212. As part of efforts to strengthen the guarantees for fundamental rights in connection with migration, a preliminary draft law, substantially reforming the current legislation on migration, was presented to the National Assembly in 2005.

213. On 15 February 2005, the Governmental established, in the Public Prosecutor's Department, the National commission for the prevention of sex-related offences, governed by act No. 16 of 31 March 2004. That act provides for the prevention and characterization of offences against sexual integrity and freedom, amending and adding articles to the criminal and judicial procedure codes.

214. Article 228 of the act imposes a sentence of four to six years in prison and 150 to 200 day-fines to anyone who, "for the purpose of profit, facilitates, incites, recruits for or in any way organizes the sexual exploitation of persons". The prison term rises to eight to ten years where the victim is underage or disabled or where the offender is a recidivist.

215. Currently, the goal set by DNMN is to control the entry, stay and exit of aliens in or from the national territory by carrying out the activities assigned to it by the law.

216. Under article 15 of the Constitution, aliens and nationals are equal before the law, and the State has an obligation to protect the fundamental rights of nationals and aliens within its jurisdiction.

217. Measures adopted in relation to migration include the usual prohibitions of entry and exit and the sanctions of detention and deportation, based on national law.

218. Aliens wishing to enter Panama under any one of the classification categories established by law must fulfil the requirements allowing to verify their identity and purpose of entry.

219. It is incumbent upon DNMN to ensure security and public order. Accordingly, the law prohibits the immigration of persons belonging to certain categories, such as individuals practicing or trading in prostitution.

220. DNMN has the authority to refuse entry or transit in or through the country to aliens on grounds of security, public health or public order. Such measures are currently taken as part of frontier administration.

221. For some years, DNMN has been using an advanced and integrated system for identifying individuals subject to an injunction or prohibition when they appear at frontier crossing points.

222. Act No. No. 47 of 31 August 1999 governs visas provided as a means for controlling the entry of persons whose nationality is subject to migration restrictions.

223. In keeping with the Constitution, once having legally entered the territory, an alien may move freely in accordance with the visa or entry permit obtained.

224. Any alien wishing to stay in Panama longer than the period accorded may contact DNMN on the basis of the appropriate records for the appropriate procedure, if the relevant requirements are met.

225. Article 931 of the administrative code provides that all persons residing in the territory of Panama shall be protected by the police not only when requesting aid, but also when the person or the rights of the individual concerned are endangered.

226. On the contrary, any alien found in the territory without a residence authorization is subject to a fine or equivalent detention. Actually, no such conversion takes place. Detention is immediate and a fine is imposed in the amount stipulated by the law.

227. Migration officials are authorized to arrest any alien attempting to enter the territory in violation of the law or caught in the territory without documents allowing his or her stay.

228. The law clearly states that an alien may not be arrested arbitrarily but only if present illegally in the country, unless caught in the act of committing an offence, as stipulated in the Constitution.

229. DNMN is in direct contact with various security bodies involved in maintaining public order, such as the National Police, in order to elucidate any unclear cases and determine the appropriate steps to be taken.

230. Under the judicial procedure code regulating civil and criminal proceedings, any detained alien may, in the course of the proceedings, communicate with an accredited representative of his/her Government in Panama.

231. In that connection, DNMN maintains permanent contact with the various consulates, which offer support for their nationals' identification, communication with relatives and repatriation.

232. DNMN may deport individuals who are subject to immigration restrictions or have entered the territory without complying with entry requirements or have remained in the territory beyond the expiration of their visa.

233. Aliens sentenced to deportation who have eluded the enforcement of that measure or have returned to Panama without the consent of DNMN shall be forced to leave the country. They may be set free, if they show a return ticket that the Department finds satisfactory. Aliens having served a prison sentence shall also be deported. In practice, this measure is not carried out, on humanitarian grounds, especially where the individual concerned has Panamanian children.

234. Subject to authorization by the DNMN General Director, persons previously turned back as deportees or repatriates are prohibited from entering the national territory at migration control points. When such a case is detected, the person concerned is returned to the respective port of embarkation or departure.

235. To ensure the protection and safety of third persons, an individual may be deported, in addition to the above reasons, on grounds of morality, health and public order. Any deportation decision must be duly reasoned.

236. DNMN may grant multiple entry visas and exit permits to persons engaged in formal discussions with the unit or having obtained a legal immigration status, thereby enabling such persons to enter and leave the country freely in a controlled manner.

237. As an administrative preventive measure, persons involved in pending criminal proceedings receive an identity known as exit prohibition card, to ensure that they may not leave the national territory.

238. This measure is taken in coordination with the judicial authorities, sole units authorized to order an exit prohibition. DNMN may not impose such a sanction on any grounds.

239. The measure in question is based on judicial procedure code article 2127, which allows restricting the exit of nationals and aliens where criminal proceedings are in progress, in view of an indictment.

240. In such cases, DNMN is authorized to interfere whether the person concerned is a national or an alien, since an exit prohibition is applicable in either case.

**Refugees**

241. Executive decree No. 23 of 10 February 1998 governs the procedure for acquiring refugee status. Panama adopted the Convention relating to the Status of Refugees through act No. 5 of 1977.

242. Title II of the above executive decree established the "provisional humanitarian protection status", applicable to cases of illegal or irregular massive entry into the country of people seeking protection. That status implies that the persons thus admitted shall not enjoy the same rights and benefits as persons recognized as temporary refugees; that the protection in question shall be provided for two months; and that the persons thus admitted shall be able to move within limits established by the Government, after receiving the advice of the National Office for Refugee Matters (ONPAR). In practice, such protection has been extended for as long as six years.

243. Actually, persons in the above category, usually of Colombian nationality, settle in the communities of Jaqué and Tuira in Darién province. As a result of the aggravation of the Colombian conflict, many have not been able to return to their country of origin, staying in Panama well beyond the two months stipulated in the executive decree, even for years, without any possibility to settle in other regions in the country or move freely, save after requesting a permit - generally accorded - from the competent authorities (DNMN, ONPAR and National Police) for medical or other reasons.

244. According to surveys conducted by the Office of the United Nations High Commissioner for Refugees (UNHCR) and ONPAR, approximately 500 persons live in Panama, enjoying temporary protection in the aforementioned communities and in the community of Puerto Obaldía in the Kuna Yala administrative division.

245. The legislation of Panama draws a distinction, with regard to offering protection, between a person persecuted as an individual and persons entering the national territory massively in search of protection, a situation not envisaged by the international instruments on the protection of the human rights of refugees. Accordingly, a revision of executive decree No. 23 of 10 February 1998 may be appropriate, with a view to aligning the provisions regarding refugees with the principles enshrined in the Convention relating to the Status of Refugees and ensuring a refugee's access to due process and to the means necessary for launching an appropriate procedure.

246. In order to promote and provide general and specific information on the rights of refugees and their right to move freely, the Office of the High Commissioner for Relief to Refugees conducts training activities for the benefit of the authorities and civil society. Moreover, UNHCR, the Ombudsman's Office of Panama and civil society representatives are currently promoting amendments to executive decree No. 23 of 10 February 1998.

**Article 13**

247. Migration law distinguishes between expulsion and deportation. The former involves the exit of persons whose residence status has been cancelled for reasons stipulated in the law; while the latter is a sanction imposed on persons who are in an illegal situation. Both processes are

carried out with the guarantee that the alien is informed of the grounds for expulsion, deportation or detention and the contestation mechanisms available.

248. The aforementioned decree-law No. 16 of 1960 establishes the procedure for detaining and deporting a person. It clearly stipulates that any alien arrested by a competent authority without a valid document shall be placed under the orders of the migration authorities - within 24 hours, according to the Constitution - and receive written notice to legalize his/her stay or leave the country.

249. Only DNMN may process and arrange for deportations. The aliens concerned may file a recourse against such action within three working days from the notification.

250. In such cases, the remedies available to the alien are a recourse for reconsideration filed with DNMN, and a recourse of appeal filed with the Ministry of the Interior and Justice. Both recourses have a suspensory effect.

251. An alien may be placed under the orders of DNMN, only if he/she is without documents or under an entry prohibition or back in the country without authorization from DNMN although under an entry prohibition.

252. On any of these grounds, the DNMN General Director immediately issues a detention order in accordance with the requirements of due process. Once placed under the orders of DNMN, the alien is interviewed by a Department of Investigations inspector, who informs the alien of the grounds for detention and draws up a hearing record containing the alien's personal details and the alien's version of the facts on which the detention is based.

253. This procedure takes place before the Investigations Department and the presence of a lawyer is not required, unless of course the detention and deportation decisions are contested.

254. Decree-law No. 16 of 1960 clearly specifies the deadlines for administrative recourses against DNMN decisions. The time limit of three days from notification is stipulated in decree-law No. 16 of 1960, not in act No. 38 of 2000, which regulates the administrative procedure and has a supplementary character.

255. Persons without documents turned over to DNMN are housed in gender-segregated premises with basic sanitation. DNMN facilities accommodate no minors, who are placed under the orders of other Government units.

256. In DNMN facilities, persons without documents are treated with dignity and their customs are taken into consideration with regard to, inter alia, food and language.

257. A chapel is available, visiting hours are scheduled and there is access to a telephone.

258. DNMN takes necessary measures for the protection of the aliens' civil and political rights under article 17 of the Constitution, which stipulates that the State shall protect the fundamental rights of aliens under its jurisdiction. In the event of an accusation or complaint regarding a violation of an alien's rights, the persons concerned may file administrative complaints under act No. 38 of 2000, regulating the administrative procedure.

259. With regard to possible cases of forced labour or trafficking in persons, DNMN, through the Legal Department, provides victims, possible victims and complainants with appropriate guidance, indicating the mechanisms available for denouncing or seeking protection from any aggression. The Ministry of Social Development frequently provides support in the cases brought up, especially where minors are involved.

260. The State provides assistance and remedies for human trafficking victims, through a care centre, run by specialized units of the police department, and appropriate shelters. The Ministry of Social Development operates a shelter for victims of sexual exploitation.

261. Moreover, DNMN cooperates with organizations providing counselling and support for persons without documents, such as the Ombudsman's Office and Caritas Internationalis.

262. Under the provisions governing the operation of DNMN, freedom of movement may be restricted on grounds provided for by the law. Mechanisms set up to that end for effective control of migration and security include the detention of illegal immigrants, prohibitions of exit, exit permits and prohibitions of entry.

263. Facilities accommodating persons without documents are limited and in a poor condition in terms of infrastructure. In that context, efforts are made to ensure that the detainees' basic requirements for cohabiting in dignity are met.

264. In defending security, DNMN necessarily cooperates with other bodies responsible for that area, such as the National Police, the Ministry of the Interior, the judicial authorities and the Public Prosecutor's Department.

**Article 14**

265. In 1989, Panama experienced an abrupt change of Government. The establishment of a new Government was followed by reports according to which a great number of denunciations were received by the judicial authorities and the processing of cases was criticized as "slow". (17)

266. Since 1992, Panama has made significant legislative progress towards ensuring that individuals have access to more effective legal instruments protecting constitutional rights.

267. Criminal procedure has been extensively reformed with a view to strengthening the principles of oral proceedings, plurality of parties and adversarial procedure; and to ensuring that judicial cases are processed within reasonable time limits in line with the provisions of the Constitution. In parallel, legislation was adopted, reducing the duration of criminal investigation; while oral proceedings and the mechanisms of summary procedure and immediate judgment were introduced into the intermediate phase of legal merit assessment. Summary procedure is currently proving to be particularly useful.

268. Accordingly, act No. 1 of 3 January 1995 (Official Journal No. 22698 of 6 January 1995) implements the criminal procedure model and establishes the conditional suspension of the trial as an alternative mechanism for concluding the proceedings, where the defendant accepts the facts and the offence carries a sentence of less than three years in jail. The objective is to resolve

an extensive range of cases, which saturate the system, through a form of lawsuit treatment that reconciles the judiciary and reparative roles of justice. Under the mechanism in question, the prejudice caused by the offence is repaired or the compensation is sufficiently assured, including through an agreement with the victim or the formal acceptance an obligation to provide compensation in keeping with the offender's possibilities (article 1982-A of the judicial procedure code).

269. With respect to the right to defence, a counsel may become involved in a case as soon as the suspect concerned is arrested or summoned to make a statement (*indagatoria*). In the suspect's absence, a relative (namely, the spouse, a relative to the fourth degree of consanguinity or second degree of affinity) may provide the required authorization.

270. A counsel's presence is also necessary in pre-statement investigation stages, where entailment can be deduced, as, for instance, in the stage of photographic recognition, generally known as one of the primary steps taken in criminal investigations in order to identify a perpetrator and the source of indications considered as leads for establishing responsibilities in subsequent stages. The counsel may therefore be present to ensure that such a preliminary stage is not conducted behind the back of the person denounced or arrested but in compliance with legal requirements and investigative practice.

271. Significant reforms have been made, inter alia in civil procedure, to ensure a speedier achievement of objectives. Under act No. 15 of 1991, new court circuits were set up and there are plans for procedural mechanisms streamlining the various judicial procedures while improving the guarantees offered to the parties.

272. Act No. 3 of 22 January 1991 introduced preventive measures different from detention pending investigation - a measure then in crisis - in order to limit its excessive use by requiring serious evidence of an accused person's responsibility before resorting to preventive measures, especially the especially the more severe ones of provisional imprisonment detention pending investigation. Accordingly, article 2147 (b) places such steps at the end of the list of applicable measures, specifying, inter alia in paragraph (d), that they are to be used only where other preventive measures would be inadequate. (18)

273. In December 2004, 14 years after the 1989 invasion of Panama by the United States of America, Ms. Marcela Rojas, President of the Panamanian Human Rights Committee (CPDH), stated that progress had been made with regard to human rights in the political and civil areas. (19)

274. The administration of justice certainly still suffers from shortcomings related to lengthy procedures, delays in violation of habeas corpus and detention pending investigation. The latter has even been recognized in Supreme Court rulings, for instance in the following passage: "Detention pending investigation in prison establishments may be ordered only when all other measures are inadequate, … except where preventive action is particularly necessary (judicial procedure code article 2147 (d)). In practice, detention is the first - and usually the only - measure applied, with prison congestion as consequence. (20)

275. Despite such weaknesses, civil society joins efforts with the State, as indicated below, towards the adoption of a penal system based on respect for basic constitutional rights.

Particularly, there are plans for making supervisory judges (*juez de garantías*) responsible for such decisions as those regarding personal preventive measures, among other measures that may affect the situation in relation to detention pending investigation. (21)

276. Moreover, the authorities are adopting administrative and legal measures conducive to improving the services related to the administration of justice, as indicated below.

277. In 1998, for instance, important legislation was adopted with regard to the protection of the rights of victims of offences (22). As stated by the deputy introducing the bill, those provisions drew inspiration from United Nations guidelines for safeguarding those rights: "This trend, I repeat, is present throughout Latin America and the developed countries. Thus, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1985, adopted the fundamental principles of justice guaranteeing the rights of victims of crime and abuse of power". (23)

278. Moreover, since suspects are parties to criminal proceedings, legislation has been adopted with a view to strengthening respect for a defendant's constitutional rights. (24) For instance, a provision amending article 2038 of the judicial procedure code reads as follows: "Consequently, as from the moment of arrest, a suspect shall be entitled to designate a lawyer or require an officially appointed defence counsel. The suspect may designate a counsel orally to the civil servant concerned. A suspect may in no case be held incommunicado but shall be free to communicate with his/her counsel on any day". Furthermore, two paragraphs have been added to article 2067 of the judicial procedure code, including the following provision: "In order to guarantee a suspect's right to defence, counsels shall be entitled to review the proceedings and, on formal request, receive copies of at least the documentary evidence within five days from the initiation of judicial investigation".

279. The investigating official must ensure that this right is effectively exercised. The competent judge must impose a PAB 25 to 100 fine on any official refusing or delaying access to the file and to copies of the documents concerned.

280. The above provisions presuppose efforts for ensuring that, under the criminal procedure designed to combat crime, victims and offenders have equitable access to justice. As the current Attorney General of the Nation, Ms. Ana Matilde Gómez, said, "all societies face the challenge of crime, a social phenomenon prejudicial not only to interests and rights of a juridical nature, but also to human nature. Accordingly, they have consistently sought mechanisms for eradicate it at least reducing its damaging impact. The consequence has been the development of criminal law towards achieving a balance between defending society's interests and the rights of victims of offences and of the offenders, a task which has not been easy." (25)

281. Civil society's views on the subject are resumed in the following excerpts from the conclusions of a report on the situation of Panama's criminal justice administration system, entitled "Citizens' audit of justice in Panama" and drawn up by the organization "Alianza Ciudadana Pro Justicia" (ACPJ):

> "1.1. According to the 2002 national Human Development Report, 40.5 per cent of the population lives in poverty, with a minimum income insufficient for meeting basic nutritional requirements. Against that backdrop, the cost of private counselling, the scarcity

of officially appointed defence counsels, the limited and uncertain services provided by the universities' free legal assistance units and the small number of NGOs lead to the conclusion that criminal justice is inaccessible to the poor sectors of Panamanian society.

1.2. The constitutional rights protection bodies enshrined in the Constitution do not actually constitute an instrument providing access to justice because the human rights that it is their role to protect are infringed by a formal rigour that prevents the appeals or actions in question from being admissible. This fact reflects a weak and inconsistent legal culture regarding human rights in the judicial system. As a result, in practice, judicial complaint procedures for human rights protection have been a failure, amounting to a rejection of the citizens' claims for justice.

1.3. The number of officially appointed defence counsels is insufficient in view of the population with limited resources that needs free legal services in accordance with the Constitution. Moreover, defence by officially appointed counsels is limited to criminal cases, some civil cases and cases involving adolescents or children. Almost 50 per cent of detainees avail themselves of such counselling but the daily number of hearings attended by each counsel affects the quality of the services provided.

1.4. Some NGOs offer legal guidance and assistance to people with limited resources but lack sufficient funds for responding to demand by the communities. As a result of limited professional staff, action undertaken by such organizations suffers from inadequate follow up, registration, monitoring and operational organization.

1.5. Recent legislation provides for special protection for victims of offences, which clearly establishes the rights of the persons concerned as parties to criminal proceedings. Moreover, the judicial authorities and the Public Prosecutor's Department have set up agencies or bodies entrusted with providing legal assistance and counsel to victims of offences but the staff and resources allocated to such units are still inadequate.

1.6. Administrative disciplinary justice through special magistrates (*corregidores*) nationwide faces such serious problems as wages under the legal minimum, inadequate training, precarious employment and lack of a central unit for coordination and supervision. These weaknesses affect the quality of the service provided to the community."

282. In addition to the above efforts towards a penal system providing for an equitable treatment of the parties to legal proceedings with regard to the protection of civil and political rights, the bodies responsible for the administration of criminal justice have adopted internal administrative measures that also are compatible with United Nations guidelines. For instance, with regard to the Office of the Attorney General of the Nation and under the current administration of that body, through administrative resolution No. 53 of 14 July 2005, the Guidelines on the Role of Prosecutors, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, were incorporated into the national legislation. (26) The resolution in question includes inter alia the following preambular and operative paragraphs:

"Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

It is decided as follows:

Prosecutors shall have appropriate education and training and shall be aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

…

Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring fair trial and the smooth functioning of the criminal justice system."

283. Another example of an administrative measure designed to safeguard the right to defence is found in a memorandum addressed to investigation officials in the Office of the Attorney General of the Nation and stressing the obligation of strict compliance with judicial procedure code articles 2008, 2013 and 2100, which relate to a suspect's right to defence in criminal proceedings and are worded as follows:

"**Article 2008**. The suspect may exercise his/her rights under the Constitution and the law, from the initiation of proceedings against him/her through the end of the procedure.

If detained, the suspect may present writs and requests to the custody officer, who shall immediately transmit them to the investigating official or the judge entrusted with the case.

Consequently, as from the moment of arrest, a suspect shall be entitled to designate a lawyer or require an officially appointed defence counsel. The suspect may designate a counsel orally to the civil servant concerned. A suspect may in no case be held incommunicado but shall be free to communicate with his/her counsel on any day.

**Article 2013**. As soon as arrested or summoned to make a statement, any person may appoint a counsel.

In the suspect's absence, power of attorney may be conferred by the following persons:

1. Spouse;

2. Relatives to the fourth degree of consanguinity;

3. Relatives to the second degree of affinity.

**Article 2100**. As soon as arrested or summoned to make a statement, any suspect may request, in person or through his/her counsel, taking any evidence that he/she considers favourable to his/her defence, provided that the evidence proposed is pertinent.

In no case may the conduct of such tests delay investigation into the case beyond the time limits stipulated in article 2033."

284. The Office of the Attorney General of the Nation has specified that "omitting or ignoring the rights provided for above may cause the nullity of the respective proceedings and thus impunity for the act investigated". (27)

285. Another administrative measure for accelerating the proceedings is the "obligation to consider requests for moving the case forward, filed by the parties to the proceedings" and to "reply in a timely manner to written requests for taking evidence". (28)

286. The above measures, as a whole, are part of steps taken by the Government in order to ensure the exercise of the constitutional rights related to fair trial in accordance with international human rights standards.

287. Generally speaking, civil society initiatives provide further impetus to Government action regarding the administration of justice. The contribution of such initiatives undertaken since 2000 to the quality of the administration of justice in Panama is an example. Currently, the most representative civil society organizations addressing justice-related issues cooperate with the present Government towards the adoption of a criminal code and a criminal procedure code based on the accusatorial or guarantees system.

288. The provisions of the Covenant article in question have a basis in the Constitution of Panama. Title III of the Constitution of Panama (29) is entitled "Individual and social right and obligations". Chapter A of that title details the citizens' fundamental rights and the judicial guarantees established in the form of procedural mechanisms for protecting and implementing those rights. A brief review will show that the rights and guarantees in question build a relation of the individual to the State that is in keeping with articles 14 and 15 of ICCPR, notwithstanding the actual implementation, discussed further on, of those rights and guarantees within the context of Panama's legal system.

289. Reference shall first be made to personal freedom and its protection under a procedural guarantee referred to as habeas corpus. Articles 21 and 23 of the Constitution ensure the legality of detention in the following terms:

"**Article 21**. No one may be deprived of liberty except by written order from a competent authority, issued in accordance with legal formalities, and on grounds previously defined by law. Those executing the order shall give a copy thereof to the person concerned, if that person so requests.

An offender surprised in the act may be arrested by any person and shall be immediately turned over to the authorities.

No one may be detained for more than 24 hours without being placed under the orders of the competent authority. Civil servants violating this precept shall suffer immediate loss of employment without prejudice to any other relevant penalties stipulated by the law.

There shall be no imprisonment, detention or arrest for debts or strictly civil obligations

**Article 23**. Any individual arrested for reasons and in a manner other than prescribed by this Constitution and the law shall be released upon his/her o another person's petition, through a writ of habeas corpus, which may be presented to a court immediately after the request, regardless of the applicable penalty.

The writ shall be processed with priority over other pending cases through summary proceedings, which may not be delayed on grounds of working hours or working days

The writ shall also be processed where there is a real or certain threat to physical freedom or where the manner or conditions of detention or the place where the person concerned is endanger his/her physical, mental or moral integrity or infringe his/her right to defence."

290. In the same spirit, the above constitutional provisions have been regulated through a basic law (30) containing the judicial procedure code, establishing the rules of procedure in civil, criminal and constitutional proceedings.

291. Accordingly, book IV of the judicial procedure code, establishes the habeas corpus guarantee, starting with article 2574, worded as follows:

"**Article 2574**. Any individual arrested for reasons and in a manner other than prescribed by the Constitution and the law, by any act emanating from the authorities, civil servants or public corporations of a given Government instrument or branch, shall be entitled to a habeas corpus order with a view to appearing immediately and publicly before the judicial authorities in order that they may hear the matter and decide whether the detention or imprisonment in question is justified and, if this is not the case, release him/her and restore matters to the previous state."

292. Under article 2575, the following measures are considered to be legally unjustified:

(a) Detention of an individual without compliance with the procedural guarantees stipulated in article 22 of the Constitution;

(b) Detention of a person in an attempt to bring that person to justice more than once for the same offence;

(c) Detention of a person by order of an authority or civil servant lacking the powers necessary to that effect;

(d) Detention of a person protected by an amnesty law or a right to remission;

(e) Confinement, deportation or expatriation on no valid legal grounds.

293. The first paragraph of article 2575 refers to article 22 of the Constitution, which is worded as follows:

"**Article 22**. Any persons placed under arrest shall be immediately informed, in an understandable manner, of the reasons for their arrest and of their constitutional and legal rights.

Persons accused of having committed a crime shall have the right to be presumed innocent until proven guilty at a public hearing where the exercise of all constitutional rights related to defence is ensured. Whoever is arrested shall have a right, from that moment, to all police and judiciary proceedings.

These matters shall be regulated by law.

294. Clearly, the habeas corpus procedure protects various rights spelt out in article 14 of ICCPR, as follows:

"Article 14:

(…)

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him/her, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(…)

(d)To be tried in his/her presence, and to defend himself/herself in person or through legal assistance of his/her own choosing; to be informed, if he/she does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if he/she does not have sufficient means to pay for it;

(…)

7. No one shall be liable to be tried or punished again for an offence for which he/she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

295. In the same spirit, article 2577 of the judicial procedure code, transforming article 21 of the Constitution into law, is worded as follows:

"**Article 2577**. An authority ordering the detention of any person or depriving that person of physical freedom shall do so in writing, stating the grounds for so doing. Those who effectuate or implement the detention shall immediately give a copy of the detention order to the persons concerned, if they so request."

296. The habeas corpus guarantee also covers persons accused of offences or violations against police laws or regulations (article 2576).

297. The Supreme Court judgements described below illustrate how criminal law is applied in relation to article 21 of the Constitution:

**Judgement No. 1**. A lawyer brought action, claiming that municipal decree No. 8 of 14 April 1994, issued by the mayor of San Miguelito, was unconstitutional. The judgement, delivered on 25 January 1995, stated that the following article of the contested decree violated article 21 of the Constitution: "Any person found in the streets of San Miguelito without proper identification and unable to justify his/her presence there shall be taken to the closest police station and placed under the orders of the competent authority". According to the plaintiff, there was violation because "in accordance with the constitutional right to a written order, the order to deprive a person of his/her physical freedom, namely, to arrest him/her, may not be issued verbally but, on the contrary, in writing". The Court considered that indeed the second article of the decree in question violated article 21 of the Constitution regarding the legal manner of detention and consequently there was sufficient reason to admit the unconstitutionality charge formulated by the plaintiff. (31)

**Judgement No. 2**. In this case, a habeas corpus action led to a decision in favour of a woman who had been detained because, when she was arrested, she did not carry valid documents proving that she resided in the country. A lawyer representing that citizen filed the habeas corpus action against the DNMN General Director, claiming that her detention was illegal. The plaintiff argued that she, of Dominican origin, was arrested in a beauty parlour where she worked as hairdresser and that, despite the resolution of 15 July 1996 under which she should be deported, under article 21 of the Constitution a person could not be arrested in that manner. The DNMN General Director counterargued that the Dominican woman had been detained because "at the time of her arrest, that citizen did not carry valid documents proving that she legally resided in the country". As a legal basis, he invoked a series of provisions and terminated by stating that "Ms.… of Dominican nationality" had been placed under the orders of DNMN for deportation. The Court said that "as is known, the objective of the habeas corpus action is to determine whether the formalities stipulated by the law have been respected with regard to a person's detention pending investigation, on pain of invalidity should a single one of those formalities had been omitted". The Court further stated that "the principle that detention should be legal was enshrined in article 21 of the Constitution, worded as follows: 'No one may be deprived of liberty except by written order from a competent authority, issued in accordance with legal formalities, and on grounds previously defined by law….'. The Court found that other provisions authorized the DNMN General Director to detain, for the purposes of the law, aliens without valid documents. However, the Court added, such provisions must "be subordinated to the constitutional rules inasmuch as the principle of supremacy of the Constitution prevails" in Panama and that "therefore, any detention order must obligatorily comply with

the aforementioned constitutional rule". Noting that the detention order was issued 11 days after the person's arrest, the Court observed that "it is incorrect for the Directorate in question to proceed with detentions (for which it is legally authorized) without following a procedure that is well-organized, consistent and above all in keeping with the constitutional order" of Panama. The Court also added that DNMN had issued, under resolution No. 4594 of 15 July 1996, a deportation order which could not be considered as a detention order, since it made no mention of detention pending investigation, while a detention order must be explicit and may not be tacit or deduced from the deportation order because such an interpretation would be incompatible with article 21 of the Constitution (inter alia, the judgements of 19 July 1996 and 17 July 1996 address this point). Moreover, the Court asserted that "the detention of Ms.…" had been "illegal inasmuch as there had been no written and properly reasoned order justifying such detention", referring to a legal antecedent involving a person's detention for two months under similar conditions. On that point the Court characterized such an "omission as a violation against article 21 of the Constitution and article 2568 of the judicial procedure code, declaring under the circumstances the detention of the persons concerned as illegal, without prejudice to treating their irregular entry into the country in accordance with migration laws and the fundamental rights enshrined in the Constitution". The Court concluded as follows: "Therefore, the Supreme Court, in plenary session, administering justice in the name of the Republic and by authority of the law, declares the detention of Ms.… to be illegal and orders her immediate release, provided that there is no other criminal charge against her." (32)

298. With regard to the prerequisites for the implementation, in Panama, of the constitutional right in question, it is appropriate to refer to various Supreme Court judgements which have developed the details of such implementation within the national legal system.

*1. Standard or reparative habeas corpus*

299. According to Mr. Rigoberto González, law professor at the University of Panama and current Secretary General of the Office of the Attorney General of the Nation, this form of habeas corpus "is used to counter arbitrary detentions carried out and aims at ensuring that person illegally deprived of freedom recovers that freedom. Ii therefore has the particular characteristic of being reparative, namely, it repairs the prejudice inflicted and the right infringed". (33) This type of habeas corpus is regulated in the aforementioned article 2574 of the judicial procedure code. Two relevant judgements, in cases involving violation of the right stipulated in article 21 of the Constitution, are described below.

**Judgement No. 1**. A habeas corpus action was brought on behalf of a citizen against the First prosecutor's office for drug-related offences. The plaintiff's lawyer claimed that his client's detention was illegal because the case records contained no reference to his client and because the decision ordering the detention pending investigation was based on the fact that his client accompanied another person when the latter was arrested. The prosecutor explained that he had ordered the detention pending investigation through a decision. The procedure records showed that on 9 July 2002 a police officer at the airport noticed a person who was nervous and decided to have him taken to a clinic for a stomach radiograph on suspicion of drug tablets. The radiograph was positive. The person in question had stated that he had been contracted by two Colombians to transport 108 heroin

tablets into the United States and that they had to return a rented vehicle to its owner. The police therefore waited at the place where the vehicle would be returned and managed to arrest two Colombians accompanied by the citizen concerned by the habeas corpus. The Court examined whether the detainee's judicial situation met the requirements stipulated in article 22 of the Constitution in conjunction with articles 2574, 2575, 2577 and 2152 of the judicial procedure code. In so doing, it found that the decision of 11 July 2002 ordering the citizen's detention pending investigation had been based on the presumed perpetration of an offence against public health. The Court indicated that, under the above article 2152, paragraph (2), the detention order should state what evidential elements appear in the record of the proceedings against the person to be detained. The court hearing the habeas corpus observed that the only charge against the detainee was that he had been in the company of the suspects when they returned the vehicle. According to the Court, his presence there could not be considered as a serious indication justifying detention because that presence was circumstantial at the time of the return of the vehicle and neither could cohabitation be considered as evidence linking him to unlawful acts. Since the decision ordering the citizen's detention pending investigation did not comply with paragraph 3 of the above article 2152, the Court, as requested, decided that the decision in question was illegal.

**Judgement No. 2**. In this case, a habeas corpus action led to a decision in favour of a citizen detained in the Women's rehabilitation centre, placed under the orders of the Second prosecutor's office for drug-related offences. The woman's apartment had been searched by the police and an illicit substance had been found. According to the file, she had acknowledged having an affair with a man who, in turn, had made a statement admitting having had access to the woman's apartment and taking into it a substance without her knowledge. The counsel bringing the action argued that the woman's detention was illegal because, even if the perpetration of a punishable act had been established, her detention pending investigation did not meet the requirements or prerequisites of article 2152 (3) of the judicial procedure code, since there were against her no indications whatsoever, nor any evidence from the unlawful activity investigated, that might justify the imposition of such a preventive measure against her person, which, in the counsel's opinion, was incompatible with the principle of presumption of innocence governing criminal procedure by virtue under article 22 of the Constitution. The Court considered that the applicability of the above article 2152 (3) to this case had not been established and therefore the grounds invoked by the prosecutor's office did not suffice for ordering the woman's detention pending investigation; and therefore declared that the preventive measure taken against her person was illegal. (35)

*2. Preventive habeas corpus*

300. This type of habeas corpus aims at avoiding a person's detention on the basis of an arbitrary or illegal order where there no arrest has yet taken place but there is a real and certain danger that an arrest may occur in view of the fact that a detention order, considered to be arbitrary, has been announced. (36)

301. This type of habeas corpus, although not explicitly provided for under Panamanian law, was nevertheless recognized by the Supreme Court in plenary session through a judgement dated 18 November 1991 and worded as follows:

"Appealing the position adopted by the First High Court, the petitioner for protection of a constitutional right uses the following arguments:

Based on a distinction between physical detention of a person and an order for detention pending investigation that may be issued against him, the appellant claims that the literal, natural and obvious meaning of the constitutional provision enshrining the habeas corpus procedure stipulates, as a prerequisite, the prior physical detention of the person concerned and not merely a detention order issued against that person, since, with regard to such an order, the Constitution provides for the remedy consisting in a petition for protection of a constitutional right. In other words, for the petitioner, article 23 of the Constitution stipulates, as key prerequisite for the habeas corpus procedure, that the applicant should be deprived of his/her physical freedom, which implies, in his opinion, that Panama's constitutional provisions do not admit the so-called " preventive habeas corpus".

(…)

The lack of progress in our legislation compared to the development observed regarding fundamental rights in other countries becomes obvious, if the text of article 23, cited above, and article 2565 of the judicial procedure code which further develops it, are compared with the content of Costa Rica's recent Act on constitutional jurisdiction, promulgated in October 1989.

(…)

Accordingly, despite the apparent lack of progress in our legislation in regulating fundamental rights, the Supreme Court considers that habeas corpus constitutes the appropriate procedure for preventing arbitrary or illegal detention orders, even if the system in question has not become effective… The Court's intention is clear and, in the view of the plenary, unobjectionable: To gather within the institute of habeas corpus procedure all procedural guarantees allowing a citizen not only to recover personal freedom where that right has been ignored through arbitrary or illegal acts, but also to prevent the equally arbitrary and illegal measures restricting the full exercise of that inalienable right of the citizen."

302. After the 2004 constitutional reform, however, the preventive habeas corpus was introduced in article 22 of the Constitution in the following terms:

"The habeas corpus procedure shall also be followed where there is a real or certain threat to physical freedom.…".

303. This type of habeas corpus aims at avoiding forms of treatment that are humiliating, degrading and offensive to the condition of detainees as human beings. The objective is not to counter, or to protect physical freedom against, a detention order or to recover freedom arbitrarily restricted but to offer protection to detainees where they suffer abuse or humiliating measures in the detention facilities. Later, hearing a habeas corpus action characterized by the petitioner as "special action for corrective habeas corpus proceedings" and explicitly requesting that the transfer of a person detained on Coiba should be declared illegal as violating article 22

of the Constitution and article 2146 of the judicial procedure code, the Supreme Court ruled as follows:

> "In this case, the very petitioner states that the habeas corpus filed is of the type which is referred to as "corrective" in legal writings and which, although not specifically regulated by Panama's Constitution and law, has been acknowledged in this body's jurisprudence, namely, in the judgements of 11 August 1993 and 24 August 1994."

304. Thus, the case in question was examined in the light of this type of habeas corpus, aimed at ensuring that the detainee receives appropriate treatment at all times, with regard to the detainee's right "to legal counsel in all police and judiciary proceedings" under article 22 of the Constitution; and with regard to the detainee's necessary communication with investigating official and the judge entrusted with the case.

305. The Court, after studying the constitutional claim and the evidence, formulated the following view:

> "According to the Court, meeting in plenary session, although certainly valid and justified, the grounds invoked by the Director of prison affairs for taking the measure of transferring the detainees from one detention facility to another have caused serious prejudice to the detainee because he is practically isolated from the court handling his case and from his counsel, to the extent that a resolution issued by the civil servant in question was notified to him with a delay of several days.
>
> Consequently, the measure adopted violates the detainee's constitutional rights and his right of access to, and continuous communication with, his counsel and the court that will hear his case, especially since he is still detained pending investigation.
>
> Therefore, the Supreme Court, in plenary session, administering justice in the name of the Republic and by authority of the law, declares the transfer of J.J.L.R. to the Coiba Penal Centre, decreed by the Director of prison affairs in the Ministry of the Interior and Justice, to be illegal and orders that the detainee be transferred to a jail in the district of the court handling his case." (37)

306. Some of the provisions of the judicial procedure code on initiating the habeas corpus procedure for the protection of constitutional rights are listed below with a view to describing that procedure in more specific terms: (38)

(a) The action may be brought by the person suffering the prejudice or any one else on that person's behalf, even without a power of attorney. It may be formulated verbally, by cable or in writing (article 2585).

(b) The habeas corpus order shall be issued against whoever ordered the detention, for execution. It shall also be notified, by the most suitable and effective means, to the official holding the prisoner or detainee in custody, and that official shall immediately bring the detainee to the official handling the request (article 2587).

(c) The order of habeas corpus shall be notified preferably in person, *within two hours* from its issuance (article 2588).

(d) Upon notification of the order, the authority or official conducting the detention shall bring immediately the detainee to the official handling the habeas corpus. If the detainee is within a distance of 50 km, the authority or official shall have two more hours, in addition to the time corresponding to the distance, for delivering the detainee (article 2589).

(e) Along with the delivery of the detainee, the civil servant to whom the order is addressed shall submit a written report stating, whether with certainty or not, who ordered the detention, the factual or legal grounds or reasons for the detention, and, if the detainee has been transferred, the place and time of the transfer, the reason and the official under whose orders the detainee was placed (article 2591).

(f) Once placed under the orders of the justice official handling the habeas corpus, the detainee may orally refute, in person or through a representative, the facts and other circumstances stated in the report or make reference to other facts or circumstances in order to prove that the detention is illegal (article 2593).

(g) If the persons invited to comply with the habeas corpus order refuse to do so within the required time limit without proper justification, the judge shall immediately transmit an order through his/her superior or the political authority or body that he/she considers appropriate, providing for the instant appearance of the disobedient officials before the court that issued the order (article 2595).

(h) In addition to the evidence that the interested person may provide, the claimant in any habeas corpus action may produce any evidence that he/she considers necessary. The evidence shall be taken during the hearing and, if time is necessary to that effect, a deadline of no more than 24 hours shall be set, unless the detainee asks for a longer period, in which case the time limit shall not exceed 72 hours (article 2598).

(i) Once the detainee is turned over, along with the respective report and other documents, the court hearing the habeas corpus shall hold the hearing immediately (article 2599).

(j) Upon termination of the hearing, where a hearing takes place, or upon receipt of the report and action, the court hearing the habeas corpus shall issue the decision (article 2600).

(k) If the detention is legally unfounded, the court hearing the habeas corpus shall of its own motion order the detainee's immediate release (article 2601).

(l) The court hearing the habeas shall ensure that the release order contained in the judgement issued at the end of the procedure is executed (article 2602).

(m) A person released pursuant to a a habeas corpus order may not be arrested again for the same facts or reasons, unless sufficient new evidence emerges (article 2604).

(n) The same procedure shall be followed where a judge with powers to issue a habeas corpus order finds, on visiting a jail or detention facility, detainees or prisoners held

on no known grounds or without having been placed under the orders of any authority or competent official (article 2505).

(o) All orders issued by the justice official handling the habeas corpus shall be immediately accepted by the authority or official to whom they are addressed (article 2506).

(p) Only an appeal against the judgement issued by the court hearing the habeas corpus may have suspensory effect, in the event that the detention is upheld. Such an appeal must be filed within one hour following the announcement of the judgement. The court examining the appeal shall hear the case within 24 hours, including consideration of the file documents (article 2608).

(q) Habeas corpus proceedings shall admit of no incidental motions of any type or any exceptions and the judges may declare themselves hindered only where they are relatives to the fourth degree of consanguinity or second degree of affinity, or where they have issued the order or heard the case at the first level of jurisdiction (article 2610).

307. Pursuant to the Guidelines for reporting under the Covenant, General part of the report, section 1 (d) on the "general legal framework within which human rights are protected" at the national level, where States are requested to provide information regarding the jurisdiction of judicial authorities, the provisions establishing jurisdiction in respect of the constitutional right to habeas corpus are listed below:

"**Article 2611**:

1. The following authorities shall have jurisdiction to hear habeas corpus requests: The plenary session of the Supreme Court, for acts stemming from authorities or civil servants having authority and power over the national territory or at least two provinces;

2. High courts of a judicial district, for acts stemming from authorities or civil servants having authority and power over one province;

3. Circuit court judges for criminal matters, for acts stemming from authorities or civil servants having authority and power over a district within their area;

4. Municipal judges for acts stemming from authorities or civil servants having partial authority and power over a judicial district."

308. Although there is persistent criticism of delays in processing recourse cases where the law provides for summary proceeding, changes are being implemented with a view to raising effectiveness. For instance:

(a) According to the ACPJ report entitled "Citizens' audit of justice in Panama", "the number of habeas corpus requests was 646 in 1995 and 506 in 2000, with a 91 per cent rate of cases concluded in either period". (39)

(b) Although so-called "preventive habeas corpus" requests were heard by the Supreme Court, the procedure was enshrined in the Constitution in 2004, as noted above.

(c) At administrative level, at least in the case of the Office of the Attorney General of the Nation, investigating officials received instructions according to which "habeas corpus actions shall be processed within the time limit provided by the law". (40)

309. The provisions of article 22 of the Constitution on the presumption of innocence personalize the provisions of article 32 on due process. Procedural constitutional rights have a dual role within the legal system. In its applied form, such a right, becomes a guiding principle within a specific context, affects the rest of the legal system and reflects the entire set of values adopted by society. The personal facet of the right in question, on the other hand, provides the individual with that right and with the power to demand its protection.

310. Accordingly, the procedural constitutional rights, in their objective capacity, may not be suspended in a state of emergency (as defined in Panamanian legislation), since, on the one hand, they do not create any subjective right for individuals and, on the other hand, they constitute governing principles that reflect values within the legal system.

311. The criminal procedure book of the code of judicial procedure establishes various institutions and provisions designed to protect the constitutional right of the presumption of innocence in criminal proceedings. Article 2040 provides that "court records shall not be withheld from the lawyers or the parties, who may at any time be informed of the state of the proceedings …". This means that proceedings are not open to non-parties, precisely with a view to the protection of the identity and presumption of innocence of any person subject to investigation but not having formally been accused or tried according to the rules of due process.

312. Article 2079 of the judicial procedure code also establishes that "in view of the suspect's presumption of innocence, the suspect's name and other details allowing him/her to be identified or connected with the offence investigated shall be withheld. Violation of this provision shall constitute defamation. Exception shall be made for criminals known to be particularly dangerous and who may be tracked down through the media subject to authorization by the Public Prosecutor's Department ".

313. In act No. 15 of 28 October 1977 (Official Journal No. 18468 of 30 November 1977), adopting the American Convention on Human Rights, in article 8, on judicial guarantees, paragraph (2), the above principle is expressed in the following terms: "Any person held for trial has the right to be presumed innocent until his/her guilt is legally established".

314. Demonstrably, the legislation of Panama is rich in provisions related to the presumption of innocence. Such provisions are crucial to the criminal process, reflecting international agreements and instruments that Panama has recognized, such as the American Convention on Human Rights, which enjoys law status. However, through the judgements of 8 November 1990 and 19 March 1991, the Supreme Court maintained that article 8 of the American Convention on Human Rights and article 32 of the Constitution form a corpus of constitutional guarantees for due process, noting that the constitutional provision is extremely concise and that article 8 of the Convention extends the procedural protection to areas not provided for under article 32. Accordingly, the judgements in question aimed at enlarging the scope of a fundamental right

crucial to the rule of law. As already explained, international law provisions lack constitutional rank in Panama, save in exceptional cases where fundamental rights are concerned, such as, here, the right to a fair trial.

315. In the Supreme Court plenary judgement of 30 April 1991, the issue of a balance between the presumption of innocence and society's right to information is treated in a way safeguarding human dignity and providing information on criminal proceedings. The judgement is worded as follows:

> "The preceding comments help to show why it is necessary to keep the suspects' physical description and name secret during investigation, not up to the issue of an enforceable judgement against them (namely, a conviction), as the rule opposed provides, since society also has the right to be informed. One may imagine the damage that lack of caution in divulging such information may cause a person who, after a criminal investigation, is ultimately discharged but faces in fact a society prejudiced by news reports, whether sensationalist or not. Moreover, such publicity may, and does, obstruct the investigation. Furthermore, what impartial judgment may a person expect, if the members of society have reached an a priori conclusion regarding the case? Criminological surveys show that persons subjected to a criminal investigation suffer significant prejudice due to social stigmatisation. It is therefore necessary to achieve a balance between presumption of innocence and society's right to information, two fundamental rights enshrined in the Constitution, in order that, on the one hand, the right to human dignity be safeguarded and, on the other hand, society may enjoy its right to information on criminal cases.
>
> Such balance certainly arises from a harmonization of articles 22, 37 and 89 of the Constitution. It implies abiding by the principle of the 'unity of the constitutional text'. That unity must be sought, prior to a possible conflict of rights, by means of an interpretation reconciling the principles that form the basis of the Constitution. An interpretation should then be sought that, according to the jurisprudence of the High Court of Justice of Spain, 'establishes a balance, not a hierarchy, between competing rights because they all represent values that must be safeguarded in the system and linked harmoniously to the extent possible'."

316. At the same time, presumption of innocence places the burden of proof on the accuser, who, in other words, weakens the presumption expressed in the aphorism "innocent until proven guilty" or in the principle of "*onus probandi*". Accordingly, in view of the public nature and the common interest aspect of criminal law, it is the State that bears the burden of proof of criminal responsibility and the role of demonstrating the guilt of the accused. The latter is under no obligation to prove his/her innocence, since a suspect enjoys a legal status that needs not to be built but, on the contrary, demolished, for the presumption of innocence to vanish.

317. Accordingly, article 2044 of the judicial procedure code provides that the investigating official shall conduct all investigations leading to the elucidation of truth in respect of the offence and the offender's personality. Moreover, article 2031 stipulates that the investigation shall aim to verify whether the offence occurred by employing all appropriate and useful steps for discovering the truth. For the suspect, the presumption of innocence implies an inversion of the burden of proof, since the prosecutor must bring evidence and through proofs invalidate that presumption.

318. The principle of "*in dubio pro reo*" ("the offender has the benefit of the doubt") is enforced in Panama. According to it, any doubt that the court may have about the actual occurrence of the offence favours the suspect. Basically, condemnation presupposes certainty. Doubt excludes condemnation. By itself, doubt suffices for acquittal. Uncertainty implies that the State did not discredit the suspect's presumed innocence and by the same token must lead to acquittal. Doubt benefits the suspect because the latter enjoys a legal status that needs not to be built. It is incumbent on the State to weaken that status and establish guilt. If the State fails in that attempt, the state of innocence remains.

319. Other relevant examples may be mentioned. For instance, in the judicial procedure code, article 1942 provides that "every person is entitled to personal freedom; innocence is presumed in the face of any denunciation". Article 1948 stipulates that all legal provisions that limit personal freedom or the exercise of powers conferred to the parties or that establish procedural sanctions will be interpreted restrictively. Article 2007 states that the accused may not be regarded as guilty before a definitive judgement is issued. Furthermore, under article 2213, when suspects are discharged, they shall be provisionally released until the appeal is decided.

320. In the same spirit, some provisions relating to investigation require the presence of an officially appointed counsel for safeguarding the constitutional right to presumption of innocence of a person recognized in a line-up or in photograph records or files. Under article 2113 of the judicial procedure code, the suspect's counsel shall be informed of any photographic recognition so that the suspect, the counsel or a witness may be present in that exercise.

321. With regard to the obligation to inform the person that may potentially be recognized or that person's representative of any photographic recognition exercise, the Supreme Court, has ruled as follows:

> "The provision in question establishes the photographic recognition procedure, an exercise whereby a person specifically recognizes the presumed offender on photographs put before that person. In that procedure, it is necessary to inform the suspect or the suspect's counsel. Either may attend or, barring that, designate a witness of their preference to be present at the procedure. That is due process." (41))

The above ruling constitutes a legal development of the procedural constitutional right to presumption of innocence.

322. Although not explicitly provided for in the national legislation, there are current practices aimed at safeguarding the presumption of innocence. For instance, with regard to recognition from a line-up, care is taken to avoid any prior visual or verbal contact between the suspect and the recognizing person.

323. In the same spirit, one of the rules - part of the code of ethics adopted through executive decree No. 246 of 15 December 2004 - guiding the conduct of investigation and reinforcing the protection of presumption of innocence states that "the civil servant shall keep confidential any facts or information to which he/she is privy by reason or through the exercise of his/her duties, without prejudice to obligations and responsibilities deriving from provisions on administrative secrecy". Moreover, according to the principle of "proper use of information", an official shall not use, for personal benefit or in the interest of third parties outside the unit, any information

to which he/she is privy through the exercise of his/her duties and which is not destined for the general public.

324. It is moreover prohibited to use, for personal benefit or in the interest of third parties, information whose possession provides an unfair advantage, leads to violation of the law or causes discrimination of any type.

325. The exercise of the right to due process is guaranteed under article 32 of the Constitution, worded as follows:

> "One may be tried only by the competent authority and in accordance with legal formalities and not more than once for the same criminal, police or disciplinary cause."

326. The 2004 reforms expanded the scope of this provision to administrative justice, a use that was not explicit earlier, although the courts had recognized it. Moreover, the scope of the right to fair trial, as stated in the previous paragraph, was broadened through the doctrine of the constitutional corpus, adopted by the plenary session of the Supreme Court and allowing for the exceptional implementation of some provisions contained in international treaties.

327. This matter is further illustrated in the following explanation, provided by the Supreme Court in a relevant judgement (of 25 July 2001):

> "Exceptionally, the Court has also established that some international law provisions may form part of the constitutional corpus, provided that they are compatible with the basic principles of the rule of law and the institutions underlying national independence and the self-determination of the State of Panama (verdict of 24 July 1990). (Judgement of 17 October 1997, Judicial registry of October 1997.)
>
> This provision, establishing that the Republic of Panama accepts the standards of international law, has been interpreted by the plenary session of the Supreme Court in the sense that, although the international treaties adopted through national laws are obligatorily enforceable, the legal consequence of that obligation is to adapt the national legislation to the provision of these international treaties, which therefore have the value of law and lack constitutional rank.
>
> In interpreting the provision in question, the plenary session of the Supreme Court has stated that, although as a rule the international provisions ratified by Panama lack constitutional rank, international treaties enshrining fundamental rights may exceptionally be part of the constitutional corpus.
>
> In the judgement of 19 March 1991, under the rapporteurship of judge Arturo Hoyos, the plenary session of the Supreme Court stated that article 8 of the American Convention on Human Rights and article 32 of the Constitution form a constitutional corpus, to the extent that they refer to the constitutional right to fair trial, with a view to expanding the scope to of a fundamental right crucial to the rule of law.
>
> (Plenary judgement of 12 August 1994, Judicial registry of August 1994, p. 168.) (Plenary judgement of 30 April 1998, Judicial registry of April 1998.)"

328. The main feature of national jurisprudence on the constitutional right to due process is the tendency to extend the scope of its constituent elements.

329. Under the 2004 constitutional reforms, the number of exceptions to the constitutional right to due process, allowing certain authorities to impose punishment without a trial in cases and within precise limits defined by law, was reduced from three to two. These exceptions are the following:

(a) Officers in charge of law enforcement units may impose penalties on their subordinates in order to contain insubordination or any mutiny or for a discipline-related offence.

(b) Captains of sea vessels or aircraft having left port are authorized to contain insubordination or any mutiny, maintain order aboard or provisionally detain any actual or presumed offender.

330. Thereby, Panama eliminated from its positive law an earlier exception to the right to a fair trial. Under that exception, civil servants having authority and power were entitled to fine or arrest any person insulting them or not showing them due respect in the exercise of their duties.

331. That earlier exception to the right to a fair trial was repealed through National Assembly act No. 22 of 29 June 2005, which took effect upon its publication in the Official Journal No. 25336 of Wednesday 6 July 2005, prohibiting the imposition of sanctions for disrespect and providing for the right of reply or rectification and other matters. That act countermanded a significant amount of provisions allowing certain authorities to impose the sanctions in question.

332. Civil society had been emphatically requesting the above change from several Governments governmental periods. The adoption of the above provisions at constitutional and legal level may therefore be considered as a civil society achievement.

333. One of the difficulties faced by the Panamanian society in relation to administration services relates to access to those services, particularly in territorial terms, with regard to the geographic jurisdiction of judicial units in relation to population growth, urban concentration and long distances in the case of rural communities. For instance, according to the second Report on urban development in Central America and Panama, there are 6.9 courts per 100,000 inhabitants (or 14,442 inhabitants per court).

334. Considering that Panama has a population of 2,380,177 (Office of the Comptroller General of the Republic, Statistics and Census Directorate, *2000 Population and housing census*) and a surface area of 75,990 km2, access to such public services can be problematic.

335. Despite the State's obligation to guarantee that all citizens have equal access to public services, disparities exist, mainly with regard to vulnerable population groups, which, as a result of their social, economic and health condition, have limited access to such services in general and justice administration services in particular.

336. It is therefore necessary to expand geographic coverage and to support efforts to that effect. In a bid to review the administration of justice in the appropriate setting, the State

covenant for justice was signed in 2005. It defined the planning principles that should guide State policies on justice administration. The long-term objectives of the covenant comprise the establishment of magistrate's courts; and the restructuring of the administrative justice (special magistrate's offices (*corregiduría*) and night courts) by giving these services a judicial character, namely, assigning them to the judicial authorities with a view to appropriately training their officials, offering them stability and enhancing access to the justice system through the lowest instance (that of a *corregiduría*).

337. With regard to the right to defence, the main weakness of the system is the inadequate number of officially appointed counsels, which is due to financial constraints. As a result, inequalities characterize the system and the citizens' access to justice, since citizens with limited financial resources may not hire a private lawyer but must use a counsel provided by the State.

338. With regard to officially appointed counsels, the relevant proposals made by the Ombudsman's Office and contained in the report of the State commission on justice provide for a restructuring of the current system.

339. The proposed measures aim at ensuring the viability and operational autonomy of the unit of officially appointed counsels, which currently answers to the judicial authorities; providing free legal assistance in alternative forms, such as assigning the supply of such services through State procurement procedures; and involving other relevant bodies, including civil society organizations, in the provision of the services in question, with a view to relieving the system and allowing for more effective public defence, which the State has an obligation to make available.

340. The report in question contains further relevant proposals for solutions through an enhancement of services and mechanisms in the area of alternative conflict resolution.

341. The concentration of constitutionality assessment procedures with the plenary session of the Supreme Court delays in some cases, beyond a reasonable time limit, the examination of matters that by their nature, related to fundamental rights, should be treated with due urgency.

342. Failure to treat the cases in question within a reasonable time limit may lead to an additional violation over and above the right whose protection they involve, such as the right to personal freedom (habeas corpus), right of access to information (related to habeas corpus procedures) and due process (protection of constitutional rights).

343. With regard to detention pending investigation and provisional imprisonment, in view of international reports indicating that the rate of persons detained without trial in Panama was among the highest (over 70 per cent, according to the United Nations report entitled "Imprisoned without judgement in Latin America and the Caribbean"), significant progress has been made since 1990 towards reducing the use of those procedures and avoiding excesses, through legal mechanisms aimed at limiting such measures to indicted offenders. The relevant provisions included judicial procedure code article 2148, which formerly regulated detention pending investigation and was worded as follows:

> "Where the proceedings concern an offence carrying at least a two-year prison sentence, or where the offender or person concerned was caught in the act, their detention

pending investigation may be ordered subject to compliance with the formalities stipulated in this code.

In no case may detention pending investigation be ordered for offences against the honour. "

344. Subsequently, act No. 42 of 1999 amended the above text as follows:

"ARTICLE 2140. Where the proceedings concern an offence carrying at least a two-year prison sentence, where there is evidence establishing the offence and the suspect's involvement through evidential means producing legal certainty about that act, and where there is possibility of flight, non-compliance with the proceedings, risk of destruction of evidence or danger for the life or health of another person or of the person concerned, the suspect's detention shall be ordered.

Where the suspect is a person with a disability, the official shall moreover take the precautions necessary for safeguarding his/her personal integrity."

345. Act No. 80 of 23 November 1998 (Official Journal No. 23684), creating a DNA database and databank and adopting other measures, is worded as follows regarding detention:

"ARTICLE 21. The preventive measure of detention pending investigation may not be taken solely for the purpose of a DNA test. In addition to the DNA test, other serious indications must be available in order to impose that measure."

346. Act No. 42 of 27 August 1999 (Official Journal No. 23876) on equal opportunities for persons with inabilities categorically stipulates, inter alia, that detention pending investigation shall not be imposed on persons with a disability or a degree of vulnerability (article 49, amending article 2147-D). It also develops the provisions of the aforementioned article 2140 of the judicial procedure code in a stricter manner, imposing more demanding prerequisites for detention pending investigation, as indicated in earlier discussions, and amply resorting to the principles of "*fumus bonis iuris*" ("prima facie case") and "*periculum in mora*" ("danger in delay), without excluding the possibility of detaining a disabled person, provided that appropriate stipulated measures are adopted to facilitate implementation in detention facilities, which, inter alia, must be adequately equipped to enable the disabled person to cope with the situation as well as possible.

347. Act No. 43 of 24 November 1997 (Official Journal No. 23427) constitutes a special approach to detention pending investigation with a view to greater conformity with human rights standards and, to that effect, inter alia, it authorizes a judge to cancel a detention, ex officio and without further formalities where the person concerned has been detained for a period equal to the minimum sentence carried by the offence, and to impose the lighter preventive measures provided for in article 2147-B of the judicial procedure code. The relevant resolution shall not be subject to any appeal.

348. The court may also order the release of the detainee where, on issuing the judgement, it notices that the defendant has served the time of the sentence. It is stipulated, restrictively, that the release shall take effect, even if the case goes to a high court on an appeal or a request for

opinion. In the case of acquittal, an appeal shall not prevent the defendant's release. However, in the case of individuals suspected of drug trafficking or related offences, the judge shall replace detention pending investigation with another preventive measure ensuring their presence at the trial. Lastly, the court shall order the immediate release of persons detained pending investigation or condemned, according to the opinion of the forensic medicine unit, are in the terminal stage of a disease. This approach aims at bringing domestic legislation into line with international human rights instruments making health care obligatory, including in the case of detainees pending investigation.

**Jurisprudence**

349. The Supreme Court judgement of 27 October 1994 is worded as follows:

> "Our legislation stipulates, as a constitutional right in criminal proceeding, the principle of presumption of innocence, and establishes, under article 2147-B of the judicial procedure code, detention pending investigation as one of the personal preventive measures. On the other hand, prior to the application of any preventive measure, the court must assess the usefulness and appropriateness of the measure to be taken, which must be proportionate to all circumstances surrounding the facts and commensurate with the person of the suspect, the development of the proceedings and anything that may influence that development and deserves to be taken into consideration when such a measure is imposed. That rule, known in legal writings as the 'proportionality principle', is all the more applicable where it is a question of depriving a person of his/her freedom." In that connection, a Spanish Court judgement of 26 November 1984 refers to the proportionality of the preventive measure of detention pending investigation in the following terms:
>
> 'The presumption of innocence is compatible with the application of preventive measures where they are taken by virtue of resolution based on the right that, when not regulated, that application must be founded on an appraisal of appropriateness to the objective pursued and the relevant circumstances because a disproportionate or unreasonable measure would not be, properly speaking, preventive, but would have a punitive character to the extent of being excessive'."

350. The Supreme Court judgement of 22 October 2002 contains the following observation:

> "It is appropriate to reiterate concepts established in legal writings that for us imply the grounds for detention pending investigation. That measure is based on defending the general interests of society; ensuring the security of persons and goods and public order; avoiding the possibility of further offences or revenge by the relatives of the victim; facilitating investigation into the case and the discovery of the truth; preventing the detainee from destroying evidence or from hindering, through threats and coercion, those who know the truth from exposing it to the judge; and ensuring the implementation of a condemnatory judgement by precluding the flight or hiding of the accused (Garcáa Valdéz, Rafael, "Criminal procedural law", Reus, Madrid, 1944, p. 273)."

351. Panama has no doubt made significant progress with regard to detention pending investigation, including through jurisprudence, an evolving task tending to remind justice professionals that detention, as a most serious measure, it must be a measure of last resort or

of an exceptional character, which means that its implementation must meet the preventive requirements applicable to all proceedings according to the letter and the spirit of article 1942 of the judicial procedure code, which accords priority to the right to personal freedom and stipulates that "every person shall be entitled to personal freedom and, in the face of any denunciation, shall be presumed innocent".

352. The preceding discussion demonstrates that, with regard to detention, Panama has sought to bring its legislation into line with the international conventions. Currently, in fact, in relation to criminal matters, steps are taken to reform criminal procedure and, to that purpose, through executive decree No. 541 of 17 November 2005, a commission for draft criminal code and criminal procedure amendments was set up. These developments have occurred in the light of the observations made by the State commission on justice, created by the President of the Republic on 28 September 2005 and comprising representatives of three State bodies (the Office of the Attorney General of the Nation, the Office of the Government Prosecutor and the Ombudsman's Office), the Bar, ACPJ and, in a guarantor's capacity, the Ecumenical committee. The preliminary draft in question serves to introduce extensive criminal procedure reforms prompted, inter alia, by problems related to detention pending investigation. Therefore, the post of supervisory judge is created. That judge's prerogatives shall include the control of the application of such measures involving restriction of rights. The text in question is currently before the National Assembly for discussion.

353. Other measures, alternative to detention pending investigation, including for instance the modern system of the electronic bracelet, could offer a direct solution to the problems in question. (42))

354. Direct solutions currently studied by the Government include the following:

(a) Definition of exceptional cases in respect of the application of preventive measures alternative to detention pending investigation as the priority measure;

(b) Establishment of a State criminological policy as a tool for formulating strategies necessary for preventing and combating crime and promoting reintegration plans and programmes;

(c) Criminal justice reform aimed at providing the country with the instruments necessary for guaranteeing the fundamental rights of the suspects and the victims.

355. The constitutional right to abstaining from possibly self-incriminating statements has always been recognized in the Panamanian legal system since the country's first republican Constitution, adopted in 1904. That right is currently provided for in article 25 of the Constitution, discussed below in the light of article 14 of ICCPR, which in paragraph 3 stipulates that, in the determination of any criminal charge against him/her, everyone shall be entitled to minimum guarantees, in full equality, such as "not to be compelled to testify against himself or to confess guilt".

356. Provisions contained in other legal texts under the above established principle are quoted below, followed by a discussion of specific cases.

357. Article 25 of the Constitution is worded as follows:

"**Article 25**. In criminal, correctional or police proceedings, no one shall be obliged to testify against oneself, one's spouse or one's relatives to the fourth degree of consanguinity or second of affinity."

358. This article is reflected in the following articles of the code of criminal judicial procedure:

"**Article 912**. The following persons shall be under no obligation to testify:

1. An authorized or appointed counsel, regarding confidential information received from a client and advice provided to clients with respect to the proceedings;

2. A confessor, regarding confessions made by a penitent;

3. A physician, regarding confidential information received from a patient;

4. A judge, while on a case;

5. A child against a parent and vice versa; or spouses against each other, except in litigations between spouses;

6. One spouse or permanent partner against the other, except in litigations between such partners.

(…)

**Article 2005**. The following persons may not initiate criminal proceedings against each other:

1. Spouses, save for offences committed by one against the person or assets of the other or their children and for bigamy;

2. Consanguineous or affine ascending or descending relatives and siblings, save for offences committed against the person or assets of the other.

The offence of breach of family obligations shall also be excepted.

(…)

**Article 2107**. A suspect's spouse and relatives to the fourth degree of consanguinity and second of affinity shall have no obligation to testify against suspect. The relation between guardian and ward shall be equivalent to the degree of kinship stipulated in this provision."

359. With regard to the following instances of implementation of the constitutional article quoted in the area of the protection of fundamental rights in accordance with the provisions of ICCPR, note should be made of the importance accorded to informing the persons involved in criminal proceedings or investigation of their constitutional and legal rights. In fact, an omission in that respect may entail the invalidation of the irregular act or of the criminal process.

360. A person filing a criminal charge with the Office for reception of complaints is informed of his/her rights. For instance, a complaint filed in May 2006 reads as follows: "It is certified that the complainant was shown the record of his/her legal and constitutional rights and that the following articles were read to the complainant: 25 of the Constitution; 351 and 353 of the criminal code; and 1956, 1957, 1958, 1959 and 2000-2005 of the judicial procedure code. The complainant was asked whether he/she understood adequately and with all clarity those legal and constitutional rights." Note should be made that the list of provisions brought to the notice of the complainant includes article 25 of the Constitution and article 2005 of the judicial procedure code.

361. Similarly, a person subject to making a statement (*indagatoria*) - the term employed in criminal law to signify the declaration made by the defendant - is read his/her rights. For instance, one record of that procedure reads as follows: "Immediately afterwards, [the person concerned] was informed, in accordance with article 2090 of the judicial procedure code, that he shall be accused for the presumed perpetration of the offence of indecent behaviour and acts against sexual integrity and freedom; that, under article 22 of the Constitution, he is entitled to being assisted by a counsel in making the statement and during the proceedings; and that, if he lacks the wherewithal for paying a private lawyer, the State is obliged to provide him with an officially appointed counsel. He was then informed of the content of article 25 of the Constitution… ".

362. The reading of article 25 of the Constitution is indispensable for the legality of the above procedure. The following short example illustrates the importance accorded to the constitutional right in question in the context of the proceedings:

A habeas corpus request was filed by a lawyer against the Attorney General of the Nation. The verdict is dated 21 April 1994. The Attorney General of the Nation had ordered detention pending investigation of a citizen, in whose trouser pocket a pouch containing eight packages of cannabis, an illicit substance, had been found. The plenary session of the Supreme Court observed that the case concerned possession of a drug by a person admitting to be a consumer of such substances and accordingly detention pending investigation was not applicable, since for small quantities the minimum sentences is less than two years in prison.

363. Moreover, the Court ruled that the statement (*indagatoria*) procedure was null and void on grounds of omission to inform the suspect of his right under article 25 of the Constitution. Consequently, the Court declared the citizen's detention pending investigation to be illegal. (43)

364. To conclude the discussion related to article 14 of ICCPR, information is provided below with regard to the organization and structure of the judicial authorities of Panama is approached, including the basic types of units of a judicial and administrative character.

365. In the judicial thing the following organization settles down:

(a) Supreme Court of Justice, comprising the plenary session and the First Division for civil matters, the Second Division for criminal matters, the Third Division for labour disputes and the Fourth Division for general matters;

(b) High Courts of Justice, comprising jurisdictions over civil matters, criminal matters, marine matters, labour, the family, children and adolescents, free competition and consumer matters;

(c) Circuit courts, with sections for civil matters, criminal matters, labour, the family, children and adolescents, free competition and consumer matters (commerce);

(d) Municipal courts, for civil matters, criminal matters, the family, children and adolescents, consumer protection and composite matters (civil-criminal);

(e) Unit of officially appointed counsels.

*Marine courts*

366. These courts hear cases related to trade and marine transport and traffic having arisen within the jurisdiction of the Republic of Panama, other than cases specified by the law.

*High Courts for labour*

367. These courts hear labour cases treated in the first instance by the Conciliation and decision boards and by the Circuit court labour sections; and appoints Circuit court labour section judges. There are two such courts, one of which was established in the City of Panama in 1948, with jurisdiction over the provinces of Panama, Colón, Bocas del Toro and Darién.

368. The High Court for labour of the Second judicial district was established in Santiago de Veraguas in 1996, with jurisdiction over the provinces of Coclé, Chiriquí, Herrera, Los Santos and Veraguas. It has the same responsibilities as the High Court for labour of the First judicial district.

*Circuit court labour sections*

369. These first instance courts hear cases arising directly or indirectly from industrial relations other than those involving an unwarranted dismissal or benefits over PAB 1,500.

*Special jurisdictions over children and adolescents and the family*

370. The Special jurisdiction over children and adolescents and the Special jurisdiction over the family are exercised by the Supreme Court, the High Courts for children and adolescents, the High Courts for the family, the circuit court sections for children and adolescents, the circuit court sections for the family and the municipal courts for the family.

371. The special jurisdictions in question are governed by the inquisitorial principles of free service, secrecy, confidentiality, communication, oral proceedings and procedural rationalization.

372. Circuit court sections for children and adolescents have jurisdiction over all cases involving minors who commit or participate in an offence or confront particularly difficult circumstances, such, inter alia, abandoned, abused or working minors.

373. Circuit court sections for the family are first instance courts hearing cases involving de facto unions, judicial separations, divorces and marriage annulment, parent-child relationship issues and adoptions of minors, save for abandoned minors.

374. Municipal courts for the family can just in case know and decide in first instance the celebrations of marriages and the cases of nutritional pension of other offices authorized by the law.

*Circuit court sections for children and adolescents*

375. These first instance courts hear cases involving illegal behaviour by minors, implementing the legal provisions in force. They see to the rehabilitation and social reintegration of minors and adopt and authorize measures regarding minors.

*High Court for free competition and consumer matters*

376. This court was created recently, through act No. 29 of 1 February 1996 establishing the Third High Court of Justice of the First judicial district, comprising three magistrates who hear appeals against judgements or documents issued at first instance level by the circuit courts of their jurisdiction.

377. The same act also provides for the creation of three (the "eighth", "ninth" and "tenth") circuit courts for civil matters in the First judicial circuit; and for the establishment of circuit courts in the provinces of Colón, Coclé, Chiriquí and Los Santos.

378. Under article 141 of act No. 29 of 1 February 1996, the above judicial shall inter alia have exclusive jurisdiction over:

(a) Individual and collective claims filed under the act in question;

(b) Disputes arising in relation to the application of the law in the areas of monopoly, consumer protection and unfair trade practices;

(c) Disputes related to intellectual property;

(d) The imposition of penalties for violations against the act in question, among other powers under chapter I, title VIII thereof on judicial procedures for the new units;

(e) Disputes involving unfair competition.

379. The same act provides fro the creation of two municipal courts in the City of Panama and one in the city of Colón, which will have exclusive jurisdiction over consumer actions for amounts up to PAB 3,000.

**Article 15**

380. Under article 46 of the Constitution, laws have no retroactive effect, save for those of public order or social interest, when such is expressed. In criminal matters, laws favourable to offenders enjoy preference and retroactivity, even where an enforceable sentence has been issued. For instance, if a person is serving a sentence and, during the period of that sentence, a law is adopted reducing the sentence carried by the offence committed, the person in question shall immediately benefit from that reduction. This is a clear example where the retroactivity of a law favours the offender.

381. A criminal law issued after the perpetration of offence fact (after the issue of the sentence or while the sentence is served) shall be applied if it is more favourable than the previous laws. There is no question of applying a third, nonexistent law comprising those provisions of both laws which are favourable to the processing.

382. At the time of sentencing, the judge must consider as hypothetically coexistent the laws that have intervened since the perpetration of the offence and specifically, not abstractly, compare them in order to determine, in view the offender's situation under those two or more laws, which one is specifically more favourable to the offender and choose that law. That comparison does not concern one single element, such as the length of the sentence, but all factors on which the possibility, type and manner of punishment depend. The judge then shall decide accordingly.

383. It is clear that there is a tendency among the courts or the investigation officers to apply the procedures established in the law, on the basis of the principle of reasonable evaluation, in a manner that contrasts with the above universal principle of implementing the law most favourable to the criminal.

384. The principle of legality in criminal matters is regulated by article 31 of the Constitution, worded as follows:

> "**Article 31**. Only those acts shall be punished which have been declared punishable by law antedating their perpetration and exactly applicable to the imputed act."

385. This principle finds its legal expression in article 1 of the criminal code, worded as follows:

> "**Article 1**. No one may be tried or punished for an act not explicitly described as an offence by the law in force at the time when that act was carried out nor shall he/she be subject to preventive measures that the law has not previously established."

386. The legality principle is governed by such legal provisions as article 3 of the criminal code, which makes compliance therewith obligatory, on penalty of invalidation of the proceedings and civil and criminal responsibility for its violation:

> "**Article 3**. Proceedings taking place in contravention of the provisions of the preceding articles shall be null and void, and the judges or investigation officials having conducted

them shall have civil and criminal responsibility for any damages and prejudice resulting from illegal proceedings."

387. In view of the importance of the legality principle, similar provisions are contained in the criminal procedure code, whose article 1943 is worded as follows:

"**Article 1943**. No one may be punished for an act not described as an offence by the law in force at the time when that act was carried out nor shall he/she be subject to preventive measures that the law has not previously established. "

388. Article 1950 also stipulates respect for the legality principle, as follows:

"**Article 1950**. Proceedings taking place in contravention of the provisions of the preceding articles shall be null and void, and the judges or investigation officials having conducted them shall have civil and criminal responsibility for any damages and prejudice resulting from illegal proceedings."

389. The Second Division for criminal matters of the Supreme Court stated its conception and use of the legality principle in a specific case, where it confirmed the judicial decree of 15 May 2006 repealing the Resolution of 2 March 2006, in which the Public Prosecutor's Department ordered that Dulio Oscar Arrocha (of the High Court magistrate) make a statement (*indagatoria*) as presumed violator of the procedures described in book II of the criminal code, and in particular in chapter I, book II, title VIII, on the offence of falsification in general, chapters I and V, title X, on the various forms from embezzlement of public funds and usurpation of public powers; and instead ordered that he make a statement (*indagatoria*) as a presumed offender under chapter I, title VIII, on the offence of falsification in general, of book II of the criminal code.

"In the opposed resolution, the Second Division clearly indicated that the conduct of DULIO OSCAR ARROCHA could not be subsumed under the criminal category of article 343 of the criminal code because, first, he exercised a public function with legal authorization, which means that he was duly authorized by the competent body for exercising the function of a High Court magistrate in accordance with decisions of the plenary session of the Supreme Court No. 16 of 26 January 1990 (pp. 245-247) and No. 219 of 29 November 1995 (pp. 234-236); and, second, the defendant stopped exercising the duties of High Court magistrate once he was notified of his suspension by virtue of the resolution issued by this body, and that is one more reason why the imputed offence did not occur.

With respect to the appellant's assertion that, even when the defendant performed the duties of High Court magistrate, having been designated by the Supreme Court, he usurped public functions because, to obtain the professional qualification, he resorted to 'the presentation of a fake diploma', the appellant - in addition to disregarding the principle of presumption of innocence, since the fake character of that document has not yet been demonstrated - is also oblivious to the principle of strict legality, cornerstone of criminal law and of the democratic rule of law, which requires that, for an offence to occur, it must first be described in criminal law.

It should be borne in mind that the practical consequence of the legality principle, as the outstanding jurist ENRIQUE BACIGALUPO put it, is the following: '… no condemnatory judgement may be issued applying a sentence not founded on a prior law, namely, a law in which the act imputed to the actor carries a penalty. In other words, judicial reasoning must start from the law because only so may the judgement be based on the law.'

The principle has then two parts, as we saw: *nullum crimen sine lege* ("no law, no offence") and *nulla poena sine lege* ("no law, no penalty"). Both the offence and the penalty must be stipulated in pre-existing law. (7)

The *nullum crimen sine lege* principle is a basic postulate of the rule of law… That is to say, although a conduct may be highly damaging socially and deserving a penalty, the State may regard it as grounds for legal and criminal punishment only if that conduct has previously been specifically announced in the law.

Therefore, the *nullum crimen sine lege* principle allows one to slip through the net of criminal law. That is why Franz v. Liszt characterized the criminal code, which actually should serve to combat crime, using an exaggerated but catchy phrase, as 'the criminal's Magna Carta'. That means that … the criminal code protects the citizen (both the honest and the dishonest citizen) against any punishment for conduct not clearly declared punishable before the act. The fact that in this way, in some cases, a particularly refined, socially harmful and therefore punishable conduct may remain unpunished is the price that the legislator must pay to preclude abuse and ensure legal certainty (for an accountable use of the State's punitive power).

Accordingly, the conduct for which Mr. DULIO ARROCHA IS BLAMED, although it may be considered antisocial and lowly, may not be subsumed under the criminal category of article criminal code 343, on the usurpation of public functions, or of article 323 of the same code (embezzlement through another's mistake). For that reason, the resolution opposed must be confirmed, in rigorous observance of the principle of criminal legality."

390. Clearly, by virtue of the legality principle, in order to be considered illegal, any act must fit the description of a criminal category or the formula by which the legislator defines the given offence. In other words, the consequence of the legality principle is typification, main defining element of an offence, since, if an act does not fully match the relevant legal definition, that act is considered non-typical and consequently there is no offence. Thus, the law provides for mechanisms for opposing, for instance, a resolution describing an offence in a given way, while the act that actually took place was different. Accordingly, article 2430 of the criminal procedure code establishes a special recourse for "setting aside", after the second instance, against Higher Court resolutions. The grounds that the law stipulates for that procedure include the following:

(a) An act that is not an offence has been regarded as one;

(b) A legal error has been committed in the description of the offence and that description affects the type or magnitude of the applicable penalty;

(c) An act that is an offence has been regarded as not being one, without there having occurred any grounds preventing its punishment.

391. All of the above grounds obviously aim at ensuring, in accordance with the legality principle, that an act may be regarded as an offence only if it has so been described by the law, and that to such an act solely that penalty is applied, which the law stipulates for that act.

392. Another way of safeguarding the legality principle in penal proceedings consists in the prohibition of applying analogy in that context. The Supreme Court has recognized that application in the following terms:

"The Second Division accepts the legal assessment and interpretation outlined by the officially appointed counsel of the convict SILVESTRE VALENCIA, since, in order to safeguard the legality principle that must prevail in penal proceedings we may not apply to criminal matters, by analogy, factual circumstances that are not restrictively and specifically provided for in the criminal code. The Supreme Court judgement of 14 November 2000 invoked by the appellant clearly fits the criterion adopted by this Court, which in various judgements has maintained what is expressed, for instance, in the judgement of 9 August 1996, as follows:

'It should be explained, contrary to the judgement appealed, that, although in the cases to which article 132 (1) applies as a specific aggravating circumstance of the homicide, that is to say, against the person of a close relative with knowledge of the kinship, article 68 provides that, for criminal law purposes, spouses are considered relatives, nevertheless the persons in question may not be considered relatives by affinity unless they are spouses (judicial registry, August 1996, p. 269).

In interpreting criminal law, judges are obliged not to neglect the literal meaning of criminal provisions. We may not impose penalties by stretching the scope of the law. The legality principle forces to us to act restrictively, especially when it is a question of criminal characterizations with specific aggravating circumstances, such as the crime of aggravated homicide, where the imputed offence must in fact fully match the norm applied (cf. judicial registry, March 1995, p.219).

Criminal code article 68 is clear. It indicates what persons, for criminal law purposes, are close relatives, and provides that the spouse and relatives to the fourth degree of consanguinity or second of affinity are considered close relatives. In the case before us, the 23-year cohabitation of Mr. SILVESTRE VALENCIA and the victim, AMARILIS ALVARADO PAZ (RIP), may not be considered as making them spouses, nor are they relatives to the fourth degree of consanguinity or second of affinity, as the Public Prosecutor's Department maintains in its petition, to the extent that there is no certification issued by the Civil Registry, proving such a family bond (son, cousin, father-in-law, daughter-in-law, grandfather, nephew etc.)'."

393. By virtue of the legality principle, the Second Division of the Supreme Court refused to acknowledge an aggravating circumstance, consisting in the fact that the homicide victim was a close relative, because the victim was not legally married to the aggressor. Thus, since criminal law defines the spouse as a close relative, and a spouse is only one who has legally entered into

a marriage contract, the Court did not consider the victim as a close relative and therefore did not find that there was a circumstance aggravating the criminal responsibility. Accordingly, it imposed a lighter sentence on the defendant.

394.Notably, in cases of a crime against humanity, the Second Division of the Supreme Court has renounced on the application of the legality principle in order to find out the whereabouts of the victims of forced disappearances, stating the following:

> "It is the view of the Second Division of the Supreme Court that the representative of the Public Prosecutor's Department is right in saying that it is not possible to speak of barring criminal prosecution by limitation on the grounds that the judicial authorities disregard the criminal act. This is so in connection with the Inter-American Convention on Forced Disappearance of Persons, signed at Belém Do Pará, Brazil, on 9 June 1994, at the twenty-fourth session of the General Assembly of the Organization of American States. Panama adopted the Convention through Act No. 32 of 28 June 1995, Official Journal No. 22817 of 3 July 1995.
>
> That act is based inter alia on the consideration that the forced disappearance of persons constitutes an affront to the conscience of the Hemisphere and a grave and abominable offence against the inherent dignity of the human being, and one that contradicts the principles and purposes enshrined in the charter of the Organization of the American States, since causing persons to disappear violates non-derogable rights of the human being. In that spirit, article II of that act reads as follows:
>
> 'For the purposes of the present Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.'
>
> Article VII of the act reads as follows:
>
> 'Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.'
>
> Since it is important - and society has a right - to know what happened to the persons who disappeared from the scene because of their political ideas, under no circumstances may one in this case apply such legal postulates as the legality principle and the non-retroactive character of criminal laws, given that, in line with the explanations provided by the Nürnberg Tribunal at the time, 'the Tribunal does not create Law but applies an already existing law and the Latin principle *nullum crimen, nulla poena sine lege* expressed a principle of justice and it would be more unjust if these deliberate infringements of international conventions and provisions remained totally unpunished' (cf. CALDERON PERAGON, José Raúl, *El juicio de Nuremberg. Hacia una Corte Penal Internacional* ("The Nürnberg Trial. Towards an international criminal court"), Jabalcuz, Spain, 2001, p. 56).

Accordingly, for the reasons explained above, the Court may not fail to take into consideration that the complainant and the witnesses to the facts have confirmed that a regime preventing free access to justice ruled at the time of Heliodoro Portugal's forced disappearance".

In view of the above, the Second Division finds it inappropriate to grant a definitive discharge on the grounds of prescription of criminal prosecution, while admitting that 'at the time stated, a political disturbance had just occurred in the Republic, whereby a powerful group of armed units belonging to the National Guard used force to change the direction of the country's fate away from the democratic course established by the Constitution in force' (p. 2.501)."

395. One may therefore conclude that the law indeed applies retroactively when it allows to clearly determine the facts and those responsible for the forced disappearances, even though, at the time of perpetration of the crime, the Convention, under which prosecution of crimes against humanity is not subject to limitations, had not yet been ratified. It may be inferred that this interpretation disregards the legality principle but, as the Judge-Rapporteur indicates, implicit in that postulate there is a principle of justice, and would be much more unjust not to hear crimes against humanity that seriously impair the rule of law. Thus, the Court opts for an interpretation favourable to the ratified Conventions and to human rights.

396. That interpretation, however, has not been consistent or homogeneous, since under other legal criteria the legality principle may at no time be inapplicable to criminal matters, not even regarding forced disappearance, and therefore, in respect of domestic law, the prosecution of such crimes is considered barred by limitation or it is not possible to assert the existence of a crime that was not characterized as such at the time of the disappearance.

397. Nevertheless, a new draft criminal code is in the stage of discussion, and that text, in view with the obligation to adapt domestic legislation to the ratified international conventions, contains a characterization of the crime of forced disappearance.

398. There are in Panama NGOs that monitor compliance with, or the implementation of, judicial constitutional rights. In an inclusive spirit, they have actively participated, with State bodies, in various meetings that led to the preparation of a preliminary draft criminal code and a preliminary draft criminal procedure code, both to be discussed by the legislative bodies.

399. Civil society, grouped in ACPJ, focuses on the administration of justice. ACPJ is a non-profit organization set up on 11 July 2000 by various civil society groups. The following organizations form ACPJ: Centro de Asistencia Legal Popular (CEALP, "People's legal assistance centre"), Unión de Ciudadanas de Panamá ("Union of women citizens of Panama"), Colegio Nacional de Abogados (CAN, "National association of lawyers")), Comisión de Justicia y Paz (JUSPAX, "Justice and peace commission"), Consejo Nacional de la Empresa Privada (CoNEP, "National council for private enterprise"), Fundación para el Desarrollo de la Libertad Ciudadana ("Fund for the development of citizens' freedom"), Universidad Católica Santa María La Antigua (USMA, "Santa María La Antigua Catholic university"), Asociación Panameña de Derecho Constitucional (APADEC, "Panamenian association for constitutional law"), Universidad Latinoamericana de Ciencia y Tecnología (ULACIT, "Latin American university for science and technology"), Colegio Nacional de Periodistas ("National association of

journalists"), Centro de Investigación y Atención al Niño ("Centre for child research and care"), Unión Nacional de Abogadas ("National union of women lawyers"), Asociación Panameña de Ejecutivos de Empresa (APEDE, "Panamenian association of business executives"), Fundación Pro Víctimas del Crimen ("Fund for crime victims") and Instituto de Criminología de la Universidad de Panamá (ICRUP, "Institute of criminology of the University of Panama"). (44)

400. Since its inception, ACPJ seeks to promote interest in the situation of the administration of justice in Panama. For instance, it prepared the documents "Judicial reform, an unfinished task", outcome of a conference held on 24 and 25 October 2000. (45); and "Citizens' audit of justice in Panama", January 2004, containing extensive information collected by civil society was published about the subject of the situation of justice in Panama. (46) Such initiatives will translate into action and proposals to be implemented by the authorities under civil society control.

401. For a better understanding of progress in judicial reform, ACPJ identifies key issues in the process. Judicial reform is a top-priority matter for the media. The citizen's audit of criminal justice in Panama, conducted by ACPJ in 2003, has been the starting point of a process of ongoing monitoring by the Panamanian civil society. The most important recommendation made on the basis of that audit was to create the State commission on justice, which will formulate the agenda for judicial reform. In 2004, that proposal was presented to the three presidential candidates in the form of a citizens' petition for justice, signed by more than 25 civil society organizations.

402. Panama's criminal procedure reform aims at a system of guarantors, whereby the three competent State bodies made a commitment to the timely finalization of a State agreement for justice to serve as the central point for that reform.

403. The State covenant for justice led to the creation of a State commission on justice. ACPJ was incorporated into that commission with a view to setting the judicial reform agenda and obtaining the commitment of the three State bodies. Priority was given to the reform of criminal law (criminal procedure code and criminal code). In September a 2005, the State commission on justice presented a judicial reform agenda and the commitment of each one of the State bodies.

404. The priority issues defined by the State commission on justice are those identified as sensitive by the citizen's audit of criminal justice and include the public supply of counsels, the careers of justice professionals, ethical and disciplinary proceedings against judges, streamlining of justice and to reduction in the number of detainees held without a sentence.

405. As it had been proposed the previous year, the Government, through executive decree No. 541 of 17 November 2005, designated a Codification committee to prepare the preliminary drafts of the criminal code and the criminal procedure code. The preamble to both of those drafts, which were made public around the middle of 2006, stated the following:

> "We advocate a criminal law respectful of human rights, one that incriminates only in order to protect significant juridical rights of society; that intervenes to a minimum degree, namely, when the other social control mechanisms are not effective; that ensures that the punishment is proportional to the danger or prejudice to the protected juridical

right; and that is not limited to a merely retributive approach, in view of its other objectives, such as the rehabilitation, reintegration or retraining of those punished."

406. With regard to the criminal procedure code, the Codification committee shall ensure that the proposals developed will be, as much as possible, in keeping with the idea of an accusatorial system, which is characteristic of democracies and republican systems of Government. The guiding principles shall include actual equality of the parties to proceedings; a reparative justice respectful of human rights and human dignity; as specific objectives conducive to law and order, the effective social reintegration of offenders and the protection of victims (above all those who are defenceless); the dual character of due process, to which there are two parties, sharing life as a common good and absolutely equal before an independent and impartial judge; the effective use of oral proceedings; procedural rationalization compatible with procedural effectiveness; and the effective combat against the scourge and perversity of judicial apathy.

407. In its report, the Codification committee states that its work has been based on the goal of timely criminal justice, expeditious and uninterrupted, as prescribed in the Constitution, and contributing to the credibility in the judicial system. Accordingly, the constitutional and legal rights of the defendant as much as of the victim are a key premise of the accusatorial system. The ensuing proposals are consistent, coherent and consonant with the idea of the judicial system envisaged.

408. According to the same report, the preliminary draft of the criminal procedure code provides for a system designed on the basis of the complaints procedure concept, ensuring the equality of the parties in respect of rights, defence and opportunities. The adversarial procedure envisaged is based on the idea that a charge must be supported by evidence and a sentence by an established fault. An accusatorial system is meaningful only where the parties' rights and the freedoms are in force and the judge is impartial and independent. The supervisory judge is therefore crucial to that system, whose essential novelty is precisely that it actually safeguards procedural freedoms.

409. In the above context, it is worth outlining the basic elements postulated in the Codification committee's report.

*Criminal proceedings and basic standards*

410. The reform proposals make it clear that parties to proceedings must be treated with due respect for the dignity inherent in a human being. In order to provide the above guarantees, punitive procedures must be based, inter alia, on the following principles, rules and constitutional rights: Due process, dully appointed judge, right to trial, presumed innocence, prohibition of double jeopardy, inviolability of the right to defence, procedural rationalization, communication, independence, contradictory proceedings, impartiality and protection against self-incrimination. Consequently, when applying procedural provisions, the courts must ensure effective judicial protection and respect for the rights and guarantees under the Constitution and the international treaties, covenants, agreements or other instruments ratified by Panama. Those rules and principles must also be directly and immediately implemented in the cases under a court's jurisdiction and always enjoy precedence over any other law.

411. No hierarchic superior, whether in the administrative or judicial system, may insinuate, demand, impose or advise the adoption of any decisions or criteria by a judicial official in

formulating a judgement, in violation of the maxim *iura novit curiae* ("the court knows the law"). Accordingly, it is specifically prohibited that superiors should censure or criticize judges with regard to their judgements, in disrespect for judicial procedures.

412. The State shall guarantees to all persons free and effective access to the administration of justice with a view to due process. Therefore, those involved in judicial proceedings may not incur any expenses.

413. Parties to proceedings shall be entitled to see and contradict the documents and evidence produced by the other party. This postulate is the basis of contradictory proceedings and of the relevance of the debate. (…) No one may be tried or sentenced without an opportunity to be heard and eventually perhaps disproved according to a predetermined procedure before a competent court where the principles, rules and guarantees enshrined in the Constitution and the law have been respected.

*The concept of the freedom in the new proceedings*

414. In the new criminal procedure model for Panama, the concept of human freedom acquires, according to the Codification committee, priority status and fundamental importance. Under the proposed rules, detention pending investigation is the last option among all personal preventive measures, preceded in that list by such alternatives as supervised release, hospital arrest, house arrest and work, study and religious observance permits.

415. The proposed introduction of the execution judge, discussed again below, shall be comprehensively responsible for all matters related to the serving of a sentence, such as petitions for alternative forms of punishment, sentence substitution and suspension, conditional release and work or study permits. Expectably, these matters are to be handled at a purely judicial level, free from the current political and bureaucratic constraints on such matters.

416. The judges, not the Public Prosecutor's Department, shall be solely responsible for all preventive measures. The judicial authorities shall also be assigned the activities of the Public Prosecutor's Department with a view to establishing the supervisory judge as the actual execution official in a freedom-oriented procedural system. The operational organizational chart of the new system has been planned as follows: Collegiate courts and supervisory judges shall be established throughout the national territory, as a function of population density and the actual requirements of the individual provinces, districts and municipalities. Clearly, the number of judicial officials and units shall increase. The Government must realize that a new procedural system and an actual criminal justice reform require significant and accountable investment, taking into account the number of judges and other officials employed in the current system.

*The Supervisory Magistrate*

417. The Supervisory Magistrate has been proposed with a view to the future. Under this measure, the judicial official in question, assigned to the Supreme Court, shall be responsible for launching or investigating into all cases coming within the competence competition of the Second Division or the plenary session of the Supreme Court session of the Supreme Court, as a unique instance.

418. The Supervisory Magistrate shall have the following responsibilities:

(a) With a view to conflict resolution in respect of offences, informing the parties of alternative means allowing the abandonment of punitive actions, explaining such means and taking measures that such means imply, in accordance with the provisions of the code to be adopted;

(b) Declaring admissible or inadmissible the complaints addressed to the Second Division or the plenary session;

(c) Issuing resolutions for resolving incidental or exceptional proceedings;

(d) Invalidating such measures as searches house and other searches, attachments and personal preventive measures;

(e) Deciding with regard to abandonment of punitive actions;

(f) Holding oral hearings and issuing the respective judicial resolution, in view of self-incrimination;

(g) Ruling on summary procedure and immediate judgment and, if admitted for the respective oral hearing, issuing the respective judicial resolution;

(h) Declaring admissible or inadmissible the powers presented by the parties;

(i) Declaring admissible or inadmissible any preliminary requests concerning evidence and, if admitted, taking the evidence;

(j) Ruling on detention on grounds of expedited investigation, in view of determining which personal preventive measure is applicable;

(k) Ruling on proceedings and remedies brought to his/her knowledge by reason of the filing of a remedy of appeal or remedy of complaint against judicial decrees and procedural decisions issued by supervising judges at High Court level;

(l) Acting as judicial inspector of the Public Prosecutor's Department or of any body playing that role before the Supreme Court.

419. The Supervisory Magistrate's almost sacrosanct role consists in ensuring that the constitutional and legal guarantees are fully applicable and respected and that, at the level of proceedings, the parties avail themselves of those rights. Consequently, he/she must always be guided by due process as a right inherent to all human interaction.

420. Some may ask what will be Supervisory Magistrate's scope of action, if only few criminal cases reach the Second Division of the Supreme Court. The Codification committee has therefore considered whether indeed the plenary session should retain the competence to hear, which the code and the law currently confer to it. Others may not agree with the characterization "*de Garantías*" attributed to the supervisory judge ("*de Garantías*") or the Supervisory Magistrate ("*Magistrado de Garantías*"). But guarantees are clearly the issue here. Not that the judge or the Magistrate in question is a guarantor of the outcome for either party. Yet the term might imply a pleonasm, in the sense that the Magistrate in question is a "guarantor

of the guarantees". What guarantees? Well, those for constitutional and legal procedural rights. Naturally, this system of procedural guarantees encompasses those recognized in treaties and conventions in force in Panama, guarantees that, consequently, have been incorporated into national law. Because the current system, in respect of the constitution proper or the constitutional complex, does not allow the introduction of legal variants that may remove or add to the exclusive competence of the plenary session of the Supreme Court to decide on constitutionality. That, however, may not prevent a full-fledged introduction of the proposed office in Panama, since, foreseeably, the measure in question does not constitute an irruption into the area of constitutionality decisions but regards the system of procedural guarantees at the level of judicial proceedings in any procedure type or category, whether, inter alia, administrative, civil or labour-related.

*A break in the new criminal proceedings*

421. The break [*cesura*] (47) in punitive procedures occurs in the stage of proceedings initiation and investigation, tasks carried out by the Public Prosecutor's Department in strict relation to the offence and the offender, but now controlled by a Supervisory Tribunal (*Tribunal de Garantías*) with regard to, inter alia, material and personal preventive measures (especially detention pending investigation) and searches. At the levels of circuit courts and judicial districts there are supervisory judges and, an even greater novelty already discussed, the office of Supervisory Magistrate is established at the level of the Second Courtroom and the plenary session of the Supreme Court.

422. The Supervisory Tribunal shall decide on the admission of a complaint, have judicial control over all the acts of the proceedings initiation phase, suggest and decide the application of alternative conflict resolution methods involving abandonment of punitive action; hear issues involving the possible application of the criterion or rule of propriety; resolve all issues related to incidental matters, summary procedure and immediate judgement; and decide whether a case stands or should be sent up to a collegiate circuit court or a collegiate High Court at judicial district level.

423. The objective of the mission of a supervisory judge and the Supervisory Magistrate consist in the continuous and meticulous safeguarding of the effective and actual of the freedoms and guarantees enshrined in the Constitution, with special emphasis on the protection of human dignity, guided by the application of a criminal justice founded on the concept of the parties' "equality of arms", or due process. Such a judicial control of procedural constitutional rights shall allow the Public Prosecutor's Department - the investigation officials - to investigate into denunciations and complaints, deal with the application of material and personal preventive measures and carry out, inter alia, house or other searches, judicial inspections and attachments, provided that such steps are authorized by a supervisory judge. Emergency cases and situations are excepted but must later be legitimized by such a judge. The office of the Supervisory Magistrate, however, will always provide individuals with maximum protection in respect of their rights and freedoms.

424. No distinction is made between victim and offender. The procedure shall apply equally to the parties, in a balanced manner. That is how a genuine accusatorial system functions.

425. The second phase has been termed "preparatory and intermediate". It involves action by collegiate circuit court, a collegiate High Court or the Second Courtroom acts or the plenary

session of the Supreme Court and requires rulings on, inter alia, evidence requests, alternative means of conflict resolution, one-time petitions for adjournment of the hearing, defendant statements and incidental proceedings.

426. The third phase is the "plenary" or trial proper, based on the principle of oral proceedings, technically considered as the debate method appropriate for the rule of law and, especially, the republican system of Government. All hearings, incidental pleas, objections, defects, objections and recourses shall be conducted orally. Oral proceedings shall be the general rule.

427. As a basic rule, no ordinary or special recourse may be rejected on the grounds of formal defect, provided that it clearly expresses the factual basis and the appellant's purpose.

428. The parties may present writs by such electronic means as facsimile or the Internet. Records-based justice shall be eliminated and replaced by an adequate, systematic and modern set of managerial measures, procedural steps and other particular acts through computerized systems enabling the parties to participate in procedures through floppy disks, CDs and other software or hardware for treating judicial information.

*The enforcement judge*

429. The Codification committee has observed that one of the main weaknesses of Panama's current criminal justice system is the so-called prison system. Through DGSP, in the Ministry of the Interior and Justice, the administrative authorities have come to carry out part of the duties that, in other countries, are reserved or assigned by law to a judge and to a public prosecutor for the enforcement of sentences and preventive and protection measures.

430. The members of the Codification committee have studied the advantages of introducing the enforcement judge into the domestic legislation. Such judges shall carry out regular duties in their respective judicial districts and, in parallel, shall act as public prosecutors for enforcement. As the term implies, they shall work and function as actual judges, before whom the parties (the victim as plaintiff and the defendant) and the Public Prosecutor's Department may present requests, incidental proceedings or petitions related to the enforcement of sentences and preventive and protection measures provided for in the judgement.

431. Once a sentence is pronounced, the enforcement judge shall have responsibility for all aspects of an effective enforcement and monitoring of the sentence, including full compliance with the human rights of detainees; parole; rehabilitation hearings; sentence substitution petitions; conditional freedoms; and study, work and religious observance permits. The enforcement judge shall ensure the detainees' release once their sentence has been served and appropriately prepare, through expeditious procedures, those whose release is approaching.

432. Basically, these enforcement judges and public prosecutors shall be guarantors, to society and the convicts, of the full implementation and effectiveness of minimum rules for the treatment of the inmates.

433. Enforcement judges and public prosecutors shall be systematically assisted by an interdisciplinary professional team in the proceedings and in making decisions. The key feature of this *lege ferenda* ("what the law ought to be") proposal is that it implies judicial control over

the entire prison system in line with the provisions of the constitutional, eliminating the current political and bureaucratic constraints.

*On the new appeal on points of law*

434. In line with the provisions of the American Convention on Human Rights, the Codification committee identified two basic features indispensable to any remedy understood, *stricto iure*, as a specific possibility for persons affected or offended by a decision, judicial or not, taken as part of legal proceedings or a legal procedure to resort to a higher authority that may review the first-instance decision repeal it, amend it or annul it. Under the Convention, those two possibilities are the right to effective recourse and a person's free access to the administration of justice.

435. The special appeal on points of law, traditionally considered as the Gordian knot of procedural law and legal remedies, may hardly continue to constitute a terrible and perverse obstacle to the exercise of the right to effective recourse and to a person's free access to the administration of justice. Accordingly, the relevant proposals include the *liberalization of the appeal on points of law*. Namely, that remedy has been formulated in a way enabling any individual to - freely, effectively, appropriately and accessibly - petition it before the Second Courtroom of the Supreme Court and preventing excessively rigorous or formal logic from neutralizing or removing any possibility for the Second Courtroom, as a Court of Cassation, to amend lower-instance decisions as erroneous or incompatible with national law.

436. The appellant on points of law shall be expected to meet a minimum of requirements that, contrary to current formalities, only stipulate that, after the denunciation of the infringement of the law, the Court of Cassation shall be informed of the facts and the purpose pursued; and that the appeal may be amended or corrected according observations made by the Criminal Court of Cassation. Moreover, the time limit for entering the appeal is reduced to ten days; and the appeal may be entered orally or by petition that the appellant presents, should that have not occurred when the judgement was pronounced during the hearing.

*On the accusatorial system and the notion of indicting and incriminating evidence*

437. The Codification committee considered that the least to be expected from a person accusing another of an offence is to supply evidence for the charges brought. In terms of criminal proceedings, the accuser is called plaintiff. In lawsuits, that status is usually recognized to officials of the Public Prosecutor's Department and the other persons bringing charges. Plaintiff status is not recognized to a complainant. Understandably, the complainant may hardly be expected to produce evidence documenting the complaint. He/she, however, must be informed of the offence that would an inaccurate imputation would constitute (false complaint). Although the complainant is not party to the proceedings and has no trial-related obligation, that role is filled by an official of the Public Prosecutor's Department who ultimately initiates proceedings with punitive intent before the judicial authority. The accusatorial then functions, with regard to evidence, on the basis of the rule of "*incumbit actoris onus probandi*", which means that the plaintiff bears the burden of proof. A concomitant rule implying the same accusatorial rigour reads "*nemo iudex sine actore*", which means that there shall be no trial without a plaintiff. Consequently, no ineffectual charges may be formulated against a person.

*On the statement made by the defendant*

438. According to the Codification committee, there is little doubt that the suspect's statement commonly known as "*indagatoria*" has a strongly inquisitorial origin. Under the accusatorial system, that statement is clearly related to a right of the defendant that under no circumstances should be subject to an oath or to pressure. Accordingly, the defendant should not be summoned to the office of criminal investigation - the Public Prosecutor's Department - solely in the latter's interest or on its initiative. Obviously, that exercise should take place before an independent and impartial judge.

439. In the proposed system, as part of a form of criminal proceedings new to Panama, the defendant shall have an opportunity to exercise the right to be heard by a truly independent and impartial court. That is precisely why there are supervisory judges, the Supervisory Magistrate, collegiate circuit courts, High Courts, and the Second Courtroom and plenary session of the Supreme Court, each with a respective jurisdiction, stipulated by law, to hear specific cases or matters.

440. In the current system - called "upgraded inquisitorial system" - the suspect's statement ("*indagatoria*", Book III, article 2092 of the judicial procedure code) constitutes a form of procedure accentuating the inquisitorial profile of the punitive approach employed. By their origin, the relevant provisions are not only erroneous but also ambiguous. The only prerequisites for requiring a statement ("*indagatoria*") are the existence of a punishable act and the suspect's probable involvement, based on at least indicative evidence that is available or is found during the proceedings. Moreover, the statement ("*indagatoria*") must be made before the respective investigation official, who is, inter alia, a public prosecutor or Government official. Such crucial importance is ascribed to the measure, that the above code describes it extensively in 15 articles (articles 2089 to 2103 inclusively). A thorough reading of those provisions reveals a total absence of guarantees.

441. As the report points out with regard to the inquisitorial system, the above procedure amounts to "putting the cart before the ox", since it implies that the defendant is considered guilty before the various stages of the proceedings and the respective formalities are launched. Deontology in matters related to evidence, however, requires that the defendant's right of to be heard, accused and defended shall take place before a judge. In that context, an accusation may emerge only from the evidence produced or argued before a judge by the Public Prosecutor's Department or the plaintiff. It is then the judge who shall decide, based on that evidence, whether the case goes to court or is simply dismissed and there are no further proceedings. The efforts of an investigation official who seeks to establish the so-called "actual truth" on the basis of an excessive *inquisitio* can only fail.

442. Accordingly, the Codification committee drew up draft provisions applying the following characteristics and conditions to a suspect's statement ("*indagatoria*"), which must:

(a) Be free, spontaneous, voluntary and not the result of any threats, pressure or intimidation;

(b) Be made in the presence of the defendant's counsel, in keeping with the rule of learned technical assistance;

(c) Concern the given offence or responsibility or criminal participation of another form;

(d) Be consistent, indivisible and coherent;

(e) Not exonerate or exempt the investigation official of the Public Prosecutor's Department from establishing the veracity of the confession;

(f) Be a judicial confession, namely, done or formulated before a supervisory judge, collegiate circuit court, High Court supervisory judge, the Supervisory Magistrate of the Supreme Court or their superior bodies;

(g) Be preceded by an explanation to the defendant of the imputation or charge that it entails.

Moreover, no confession may be obtained through compulsion or insinuation. A confession statement extracted in such a manner shall be vitiated by serious constitutional defects rendering it wholly ineffective, null and void.

*On the propriety of proceedings*

443. Under the inexact term "propriety principle", the procedural legislation governing most of the Latin American legal systems contains a series of provisions to the effect that the Public Prosecutor's Department may "not initiate punitive proceedings". The so-called propriety of proceedings has never constituted any principle of procedural law but a catastrophic policy, in criminal matters, of the State which, in recent decades, has everywhere displayed a dismaying incapacity to appropriately fulfil one of its constitutional roles: Investigating into offences and prosecuting the offenders (…). It must be the supervisory judge or Supervisory Magistrate decides whether a declaratory statement on the propriety of proceedings is called for. Accordingly, under the proposed provisions, when they notice a need or when one of the current relevant prerequisites is met, Public Prosecutor's Department or the parties shall request the supervising judge to rule on the conformity of the proceedings with the law (...). In that manner, this responsibility is removed from the Public Prosecutor's Department and assigned to the appropriate authority, namely, the judges, who are the ones that must hear and determine the specific issue in question.

*On the victim under the new punitive procedures*

444. It has been correctly asserted that, in the criminal system, the victim is the underdog. The accusatorial or fundamental guarantees system achieves a balance between the parties' rights, duties and procedural obligations and other issues related to the role and responsibilities of each participant in the process. Avoiding any unwarranted partiality in favour of either party and neglect of the constitutional and legal guarantees of the other, the reform proposals outlined aim at ensuring equal procedural conditions and applying the provisions of the law and human rights treaties, with particular emphasis on matters related to the effective judicial protection of the victim and the offender.

445. Accordingly, the proposed procedural rules in respect of the parties include the following basic provisions, designed to promote the rights of the victims, who must:

- Be able to participate as a plaintiff in the proceedings without excessive formalities in order to seek recognition of the defendant's criminal responsibility and obtain, at the civil level, damages in line with the concept of reparative justice;

- Receive effective protection by the State authorities from acts directed against their own integrity and the integrity of their family;

- Be covered by measures aimed at their own security and the security of their family;

- Where a supervisory judge or Supervisory Magistrate or the competent court have been requested to rule on or determine the amount of bail or grant an alternative personal preventive measure as a substitute for detention pending investigation, be kept informed of the course of the respective procedures;

- Be able to contest any acquittal or nonsuit in cases where an exclusive non-public-policy recourse or a simple non-public-policy recourse is possible.

Moreover, a victim may contest the application of the propriety rule before a criminal court.

446. One of the objectives pursued by introducing a judge for the enforcement of sentences and preventive and protection measures (these protection measures being aimed at ensuring the personal security of the victim and his/her family) consists in allowing victims to play an important role by enabling them to offer ideas and express opinions when a decision is to be made regarding, inter alia, alternative punishments, sentence substitution or parole in favour of the offender after a definitive and enforceable sentence has been issued. Moreover, the Public Prosecutor's Department shall be assigned the task of providing the victim - regardless of whether the victim is a plaintiff - with information on the development of the proceedings, and in particular on whether the case has been dropped or may be reactivated or allows for a viable civil action. The victim may request the Public Prosecutor's Department or the court to take appropriate measures to protect his/her person and family from, for instance, probable harassment, threats or aggression. Lastly, the victim may contest, inter alia, the application of the propriety rule, a nonsuit or a first instance sentence.

447. Action may be brought without any formality. It shall be enough to request the prosecution of the offence and its imputation to one or more persons, if any possible offenders are known.

*On evidence and the related rules in the complaints procedure system*

448. The Codification committee has shown that the inquisitorial and the accusatorial systems reserve a different treatment and a different role to such evidence-related procedures as taking and evaluating evidence, assessing the evidential value of individual elements and the propriety of evidence and determining who bears the burden of proof. The so-called "proof by confrontation" may not be applied to the complaints procedure system.

449. Bearing in mind the postulates and principles of the accusatorial system, the Codification committee asked the following questions with regard to each type of evidence: What is evidence? Who takes evidence? How must evidence be taken? Why should evidence be taken? When or at what moment should evidence be taken? Laying thus bare the institutional legal approach to evidence in punitive procedures led to the following insights:

- The idea or concept of evidence plays no role in connection with either the so-called "proof by confrontation" or, much less, the statement ("*indagatoria*") imposed on a suspect;

- To count as evidence of criminal responsibility, a witness's statement must be made before a supervisory judge or an ordinary court;

- Expert evidence must be supplied in the same manner, before a judge;

- The defendant may not be forced to participate in the reconstruction of the crime and his/her refusal to do so may not be considered as incriminating evidence.

- The judge may not seek testimony, expert evidence or evidence of any other type in an unofficial manner.

450. All evidence submitted to the judicial authority must be produced, as described above, by the parties. In the accusatorial system, there is a time-worn eventuality that the judge may actively participate in establishing evidence, an activity that is actually incumbent on the parties. For they are the ones to debate on the punitive claim that constitutes the subject-matter of the proceedings.

451. Evidence shall be taken only before a judicial authority. Therefore, when appearing before the supervisory judge to institute proceedings or send a case to trial, the Public Prosecutor's Department shall do so with appropriate evidence on which the respective order may be based. The same shall apply to the parties that appear as plaintiffs or and to the parties accused, when entering through their counsels motions against the charges brought.

452. Under Panama's current procedural legislation, when the criminal court on its own initiative requires evidence, the respective official in the Public Prosecutor's Department, staying in his/her office, constrained by the system, in view of the multitude of individuals mentioned in the initial statements, proceeds to compile a lengthy list of witnesses, many of them irrelevant them to the criminal investigation; request reports; seek and receive documents; send abundant notes; take the suspect's statement ("*indagatoria*"); enlarge the investigation as he/she sees fit; order the suspect's detention pending investigation; decide what is evidence, what evidence is pertinent and what evidence is not; reject evidence proposed by the defence; and evaluate the evidence. In short, that official may well be said to be "judge and judged" in the punitive procedure.

453. From a sociological perspective, the Codification committee decided to do away with evidence that is apparent, illegal, impermissible, ineffective or substantively or procedurally irrelevant, considering that the current paradigm, false and inconsistent, has held sway too many years. If a material truth exists, will a formal truth also exist? Is it certain that truth has two sides, as a coin does? Is it appropriate that the public prosecutor or the judge should determine, in every case, what type of truth is presented? Such vain talk about material truth, preaching that dazzling pure truth should be sought through the procedures, eventually led to a pitiful deformation of the issue of the freedoms and rights of the parties during the proceedings. The evaluation and consideration of evidence were ultimately subject to a last-resort decision as to whether the particular evidence in question fitted the postulate of material truth. As a result, at the procedural level, dialectic logic was replaced by a system of virtual and actual distortions.

454. The new procedural paradigm rightly addresses, in a direct manner, the issue of evidence evaluation, on the view that evidence must be used to clarify or determining positive or negative certainty in the proceedings. Indeed, evidence should be such as to produce, in the legal thinking of the judge, viewed as an independent and impartial third party, the conviction or degree of certainty necessary for agreeing with the prosecution's or the plaintiff's punitive claim or, on the contrary, rejecting that claim and terminate the proceedings, acquitting the defendant.

455. Reasonable evaluation is the primordial guiding system for all evidence assessment. No evidence admitted or taken in contravention of the appropriate procedures shall be evaluated by a judge. The proposed system is clearly and transparently in keeping with and based on the accusatorial concept. It is also based on the unquestionable equality of the parties to the proceedings and on the idea that the burden of proof rests on the accusing party. Accordingly, it is the Public Prosecutor's Department that bears the burden of proof for purposes of indictment or conviction, since that unit initiates proceedings in an overwhelming majority of criminal cases, while plaintiffs bringing an exclusive non-public-policy action constitute an exception. In the absence of evidence providing certainty, in the framework of the proceedings, as to the occurrence of the offence and culpability of the defendant, the judge shall without any doubt acquit the accused.

**Criminal law reform and extradition**

456. Extradition is governed by relevant multilateral and bilateral treaties to which Panama is party. In the absence of such instruments, Panama may approve extradition on the basis of the principle of international reciprocity, mainly under the judicial procedure code, book III, title IX ("Special procedures"), chapter V ("Extradition"), articles 2496 to 2516, and under act No. 23 of 30 December 1986 on drug-related crimes, which also deals with drug-related extradition.

457. If there is a treaty with the requesting State, those of the above provisions which are substantive are applied complementarily, while procedural provisions apply regardless of the existence of an international instrument.

458. **Treaties to which Panama is a party**

(a) Multilateral treaties (inter alia)

- Convention on Private International Law
- Convention on Extradition, 1933
- Inter-American Convention on Extradition
- United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- Inter-American Convention against Corruption
- United Nations Convention against Corruption
- Convention against Transnational Organized Crime

(b) Bilateral treaties:

(i) In force:

Treaties with Colombia, Mexico, Peru, Spain, Ukraine, the United Kingdom and the United States

(ii) Pending:

Treaties with Costa Rica, Mexico and Paraguay.

**Current extradition procedures**

*A. Request for preventive detention for purposes of extradition*

459. The objective of this request, transmitted by another State through the diplomatic channel, is the preventive detention, on grounds of emergency, of a person staying in the territory of Panama, who is wanted in the requesting State for serving an outstanding sentence or facing criminal proceedings. It is based on treaties and article 2507 of the judicial procedure code. Once the person in question is arrested, the requesting State is accorded a 60-day time limit for presenting a formal request and fulfilling the requirements provided for in the treaty, on which the request is based, or, if there is no such treaty, in the national legislation. As soon as arrested, the detained person is entitled to a counsel and may request from the judicial authorities any remedy or action provided by the law in such cases, such as a habeas corpus procedure or release on bail.

*B. Formal request for extradition*

460. The requesting State may omit the above stage and make direct of the formal request for extradition. To that effect, that State must fulfil the requirements provided for in the respective treaty or, if there is no such treaty, in article 2498 of the judicial procedure code for ordinary crimes and in article 42 of act No. 23 for drug-related crimes. Based on the request, an order will be issued for the detention of the person in question up to the conclusion of the extradition proceedings.

*C. Internal procedure pursuant to a formal request for extradition*

461. Once the requesting State, through its diplomatic representation to the Ministry of Foreign Affairs, has transmitted the formal request for extradition and the related supporting documents, the extradition procedure is launched. The procedure followed depends on the type of crime referred to in the extradition request.

*D. Requests for extradition based on drug-related crimes*

462. Once the supporting documents accompanying the extradition request are presented, the Ministry of Foreign Affairs, under an explicit provision of act No. 23 on drug-related crimes, shall, within five working days, transmit those documents to the Office of the Attorney General of the Nation, the authority responsible for determining whether the request meets the requirements stipulated in the national law. Within five working days, that body shall issue an opinion as to whether the request is founded. If it considers that the documents fail to meet

formal requirements, that body shall make that known through the Ministry of Foreign Affairs and a time limit of 30 working days shall be set for correcting any defects will be granted. If it considers that the documents meet the requirements of national legislation, the Office of the Attorney General of the Nation shall make that known to the Ministry of Foreign Affairs, so that the latter may, within a time limit of 15 working days, make a decision on the matter.

*E. Requests for extradition based on ordinary crimes*

463. In this case, the phase referred to in the previous paragraph is governed by the judicial procedure code, particularly article 2507, which provides that the supporting documents for the extradition request shall be examined by the Ministry of Foreign Affairs, which shall determine whether the request meets the formal requirements.

*F. Time limit for the administrative decision*

464. In relation to both drug-related and ordinary crimes, it is the Ministry of Foreign Affairs that shall determine whether the request transmitted "is admissible". If it so determines, the Ministry shall issue a decision, which shall be notified to the person extradited. Should he/she voluntarily consent to be extradited, that person shall be placed under the orders of the requesting authority and must be extradited within a 30-day time limit.

*G. Time limit for contestation*

465. Should the person to be extradited oppose the extradition, he/she may, through his/her legal representative, may file with the Second Courtroom of the Supreme Courtroom of the Supreme Court an objection plea (under article 2507 of the judicial procedure code) asking that body to determine the assessment of the Ministry of Foreign Affairs conforms with the law. If it considers that the objections raised by the person whose extradition is requested are legally founded, the Supreme Court shall repeal the resolution issued by the Ministry of Foreign Affairs and order the immediate release of that person, whose extradition may then no longer be requested in relation to the same acts (article 2509).

*H. Executive decision*

466. If it rejects the objections raised by the person to be extradited, the Supreme Court shall make that known and it shall be incumbent on the President of the Republic, acting together with the Minister of Foreign Affairs, to make the final decision with respect to the extradition. The decision taken by the Government with respect to the extradition shall be issued as an executive resolution, notified personally to the interested person. If the extradition request is rejected, the Government shall order the immediate release of that person, whose extradition may then no longer be requested in relation to the same acts. If, however, the extradition is granted, that person shall be placed under the orders of the requesting authority and the extradition must be carried out within a 30-day time non-extensible limit.

*Advantages and disadvantages of the current legislation on extradition*

467. The current legislation on extradition has the following advantages:

(a) The period from the presentation of the request to the ministerial resolution is relatively short (45 days at most);

(b) The fundamental and human rights of the persons whose extradition is requested are protected;

(c) The process as a whole is centralized in a single body, the Ministry of Foreign Affairs;

(d) In the absence of treaties, extraditions may be granted on the basis of the principle of international reciprocity;

(e) The procedural rules are easy to explain and apply;

(f) The persons whose extradition is requested may use all legal mechanisms under national law to achieve their release;

(g) The ultimate extradition decisions are taken at the highest hierarchical level of the State (the Minister of Foreign Affairs, the Supreme Court and the President of the Republic).

468. The current legislation on extradition has the following disadvantages:

(a) There is a double internal legislation on the extradition procedure;

(b) The provisions on drug-related extradition are unclear;

(c) The basic elements and principles governing extradition are not precisely stated and as a result their implementation is thorny;

(d) Act No. 23 on drug-related crimes is not coordinated with the provisions of the judicial procedure code on extradition.

*I. New procedure of extradition in the project of criminal procedure code*

469. The basic characteristics of the new procedure are the following:

(a) The extradition procedure is coordinated;

(b) The extradition procedure is a matter for the judicial authorities;

(c) The executive rank in the final extradition decision is maintained;

(d) In special cases, condemned offenders may be extradited;

(e) The appeals court role of the Second Courtroom of the Supreme Court is maintained;

(f) The principles governing extradition are more precisely formulated;

(g) The concept of political offence is brought into line with international standards;

(h) The principles ensuring respect for the human rights of persons whose extradition is requested are strengthened;

(i) Explicit abandonment of the extradition procedure is possible at any time.

**Implementation of treaties on the transfer of persons serving sentences in Panama**

470. **Treaties to which Panama is a party**

(a) Bilateral treaties:

(i) In force:

Treaties with Argentina, Colombia, Honduras, Mexico, Peru, Spain and the United States

(ii) Pending:

Treaties with El Salvador and Paraguay.

(b) Multilateral treaties

- Inter-American Convention on Serving Criminal Sentences abroad

- Convention on the Transfer of Sentenced Persons (Strasbourg, France, 1983).

471. Panama reinitiated the policy of ensuring that aliens detained in Panama and Panamanians detained abroad enjoy all of the facilities necessary for a process of effective social reintegration.

472. A basic tenet is that the persons in question should serve the balance of their sentence in their country of origin because detention abroad is not conducive to the attainment of the objectives of detention.

473. The above policy is pursued through negotiations and bilateral and multilateral treaties on the transfer of sentenced persons, aimed at promoting social reintegration by placing detainees in an environment familiar to them.

474. The policy also encourages the reunification of families whose members have, for various reasons, been long separated, waiting for the end sentences served abroad.

475. The Codification committee approves the above policy, which has been proposed by the Ministry of Foreign Relations, as a significant improvement to the current domestic situation with regard to extradition.

**Retroactivity of the principle of "*in dubio pro reo*"
("the offender has the benefit of the doubt")**

476. Generally speaking, the most favourable law, namely, the one more favourable than any other, is one that, when applied to particular cases (*in concreto*) and as a whole (*in globo*). Leads in the last analysis to a result that is more favourable to the accused.

477. Regarding the retroactivity of the criminal law most favourable at the time of sentencing, the law that shall be applied is the law in force at the time of perpetration of the offence. This implicitly confirms the rule that the law effective at the time of the act is applicable and will continue to be the one applied if the new law is more severe. That is the approach traditionally taken in most of the legislations.

478. In that connection, reference may be made to the non-implementation of act No. 28 of 1 July 2005 on sentence commutation, under which the time of work or study shall be taken into account when a sentence is commuted. On this point, the prison system is failing an obligation to the detainees, although inadequate funds and human resources have provided an excuse.

479. The administration of justice needs substantive and structural changes aimed at enhancing fairness, independence, impartiality and human rights guarantees. To that end, current initiatives to reform criminal law must meet criteria based on specialized knowledge.

**Article 16**

480. The right to recognition as a person before the law is equivalent to being a legal person, capable of holding and exercising rights.

481. Articles 41 to 44 of Panama's civil code make use of the basic notion of "natural person"and are worded as follows:

> "**Article 41**. The existence of the natural person starts at birth. The embryo, however, if it is born under the conditions stipulated in the following article, shall be considered born to all purposes favourable to him/her.
>
> Unless there is evidence to the contrary and for the purposes of the present article, the born infant shall be presumed to have been conceived 300 days before birth.
>
> **Article 42**. For civil purposes, a foetus that lives for one moment after separation from the womb shall be considered born.
>
> **Article 43**. The law shall protect the life of the being that is going to be born. Consequently, at the request of any person or of his/her own initiative, the judge shall take any measures that he/she considers appropriate in order to protect the existence of the unborn, whenever he/she believes that the unborn is in danger in any way. Therefore, any punishment imposed on the mother, which may threaten the life or health of the being that she carries in her womb shall be postponed until after birth.
>
> **Article 44**. The rights reserved to the being that is in the womb, if that being is born and lives, shall be suspended until the birth takes place, at which time the new born shall start

> enjoying those rights as if that being had existed in the time when the rights were reserved."

482. Accordingly, under Panama's civil law, birth is the vital fact that sets the frame for the existence of natural persons, although there is no neglect by the law as from their conception.

483. In the same spirit, the family and minors code, book II ("On minors"), article 484, provides as follows:

> "This book regulates the constitutional and legal rights of the minor, defined as any human being from conception to the age of 18."

484. Moreover, under article 489 (1) of that code, every minor is entitled to the protection of his/her prenatal life.

485. The above provisions imply that, under Panamanian law, every person enjoys rights, in judicial matters, from the moment of conception.

486. With regard to birth registration, Panama's Electoral Tribunal, although subject to the relevant civil and family and minors code provisions, applies its own rules and regulations.

487. Accordingly, the new provisions on the registration of vital details and legal acts related to the civil status of persons, namely, article 2 of act No. 31 of 25 July 2006, are worded as follows:

> "Registrations with the National Directorate of the population register shall aim at guaranteeing and safeguarding the Panamanian nationality and the human rights related to civil status and recognized in the international conventions and other similar instruments that the Republic of Panama has ratified by law".

488. Under the same article, the Electoral Tribunal, through the responsible for safeguarding and protecting the rights of every Panamanian inhabitant at the moment of registration of the respective births, thereby guaranteeing human rights by recognizing individuals as persons before the law as from birth and recognizing their rights as from conception in accordance with the civil code.

489. A person's legal status, which implies his/her capacity to be subject to rights, has implications for the political field, since rights include civil and political right. This important matter will be referred to in connection with article 25 of ICCPR.

**Article 17**

490. Under article 26 of the Constitution, the domicile or residence shall be inviolable; and no one may enter therein without the consent of the owner, except by written order of a competent authority and for a specific purpose or to assist the victims of a crime or disaster. Moreover, correspondence and other private shall be inviolable and may not be seized or examined by any one other than their proprietor.

491. Panama's legislation, the criminal code in particular, regulates the inviolability of the domicile, stipulating that any one who enters another's home or house or ancillary buildings

either against the express or presumed will of whoever is entitled to prevent that or secretly or deceitfully shall be punished with 6 to 20 months in prison and a fine of up to 30 day-fines.

492. Under a special chapter in the criminal code, reserved to offences against secrecy, which is considered inviolable, whoever removes, destroys, diverts or intercepts correspondence addressed to another shall be punished with prison and the sentence shall be increased of one sixth to one half if the offender is an employee of the post-office and telecommunications organization or of a national or international communications company.

493. The criminal code, in book II, title III, chapter I, contains comprehensive provisions on the characterization of crimes against honour and stipulates respective punishments, including protection for all citizens from arbitrary or illegal interference in their private life or family, for instance through calumny or insult.

494. The law specifies the cases in which interference or searches are possible in a private domicile. The judicial procedure code specifically determines those cases. One example is the presence, in a building, establishment, vessel or aircraft, of a person that must be served a writ or summons or undergo a judicial inspection.

495. In criminal cases, the judicial procedure code specifically and clearly provides for house or other searches when they are necessary or when there is a serious indication that the suspect is in a given building of any type, establishment or property.

496. The authorized forms of interference or search shall be conducted by the competent authority in accordance with established legal procedures. Any other form of interference or search shall constitute an offence.

497. In Panama, various laws safeguard the domicile, the family, private life and correspondence and protect them from any form of interference occurring against the will of the proprietor or outside the law.

**Article 18**

498. The right to freedom of thought, conscience and religion is part of the rights based on the principle of the freedom. Also called "first generation rights", they began to be claimed in the 16th century.

499. The right in question requires equal freedom of individuals and social groups in professing and expressing ideas and beliefs of any type, subject to no restrictions other than those necessary under the law for the protection of public law. Such freedom necessarily precludes compelling a person to declare his/her ideas or engaging in discrimination in connection with them. Accordingly, as an objective guarantee, the exercise of this right in its various forms generally implies a need for discerning neutrality on the part of the authorities.

500. The recognition and effective guarantee of the freedom of thought, conscience and religion are enshrined in articles 35 and 37 of the Constitution, which stipulate that all religions may be professed and all forms of worship practiced freely and that every person may express his/her opinion freely, in writing or by any other means.

501. Under the Constitution, the right to religion and worship are subject to a limitation consisting in respect for Christian morality and public order and to the recognition of the Catholic religion as the one practiced by the majority of Panamanians; while, with regard to freedom of thought, legal responsibility (liability) is incurred when the reputation or honour of persons is assailed or when public safety or public order are attacked.

502. The State guarantees the above right to individuals and community groups ensuring the full effect and enjoyment of the respective freedoms. There are no policies, plans or methods specifically designed for ensuring that right. In view of its role, the Ombudsman's Office monitors and controls the exercise of all fundamental rights, including the right in question.

503. The bodies responsible for monitoring the exercise and implementation of human rights, including the right to freedom of thought, conscience and religion, lack the financial resources necessary for covering the entire national territory. In many cases, this problem can be solved.

504. In the period 2001-2005, the Ombudsman's Office received from various persons complaints of infringement of the right in question, including nine denunciations of violations of the right to freedom of religion, of which six against the Ministry of Education, two against the prison system and one against the judicial authorities. Details are provided below.

*Complaint 706-01 against the Ministry of Education*

505. The complainant stated that her son belonged to the order of "Separated Brethren" known as Jehovah's Witnesses and did not wish to pass the religion course required for graduation from the Veraguas education centre. He had been exempted from attending religion classes and participating in religious rituals. Several school directors had explained the situation to the director of the above establishment and the Ministry of Education but neither of these bodies had provided a specific answer.

*Complaint 341-04 against the General Directorate of the Prison System*

506. The complainant's counsel stated that his client's religious rights and beliefs had been infringed. His Torah, sacred text of Judaism, had been torn up, his guards derided him and he could not have food satisfying the requirements of his religion.

*Representation 2018-05*

507. The parents of a two years old girl stated that a family court had order their daughter's custody taken from them because they belonged to the Rastafari religious movement,

508. The Ombudsman's Office carries out protection, promotion and information activities in the area of fundamental rights, including those provided for in article 18 ICCPR. That work comprises training for civil servants, NGOs and population groups through seminars, workshops, radio and television broadcasts, brochures, "Mobile Ombudsman's Office" activities, inter-institutional meetings and meetings with those affected.

## Article 19

509. Under article 37 of the Constitution, every person may express his/her opinion freely, in writing or by any other means, without being subject to prior censorship, but legal responsibility (liability) is incurred when the reputation or honour of persons is assailed or when public safety or public order are attacked.

510. The Republic of Panama, therefore, considers the right to freedom of expression to be a fundamental principle.

511. In 2002, the Ombudsman's Office, underscoring the need to adapt domestic legislation on freedom of expression to international standards and the task as a challenge, established, as one of its units, the Office of the special agent for freedom of expression and access to information. The main objective of the unit is to take all appropriate initiatives for aligning national law with the international standards and recommendations of the Inter-American Human Rights System, thereby ensuring that Panama is removed from the list of "countries requiring special attention ".

512. In March 2004, the Ombudsman's Office, through the above unit, issued an official release stating that "as part of a nascent discussion regarding a constitutional reform or a new constitution, consideration should be given to the deletion of the provision contained in article 33 of the Constitution, a provision that has provided constitutional encouragement for rules leading to offences involving contempt". Panama deserves to enter the list of countries that have paid special attention to such matters in the interest of the right to free thought and expression.

513. On 18 June 2004, a group of legislators submitted to the Commission on governance, justice and constitutional affairs of the National Assembly for consideration the preliminary draft of a legislative act aimed at amending and updating the Constitution on certain points.

514. Regarding article 33 of the Constitution, the proposed amendment maintained the possibility for officials exercising authority and jurisdiction to fine or arrest anyone who insulted them or was in contempt of their authority in discharging their official duties or prevented them from doing so.

515. According to the Ombudsman's Office, Panama was the only Latin American country that in 2004 continued to maintain in its Constitution the offence of disrespect.

516. Journalists' associations, civil society organizations and all bodies active in the area of human rights had been requesting for a long time the alignment of domestic legislation to international standards regarding freedom of expression and access to information.

517. A statement from the Ombudsman's Office, recommending the elimination of the provision regarding the offence of disrespect and recapitulating the relevant arguments formulated by that unit in recent years, was read at the plenary meeting of the National Assembly on 7 July 2004, during the debate on amending article 33.

518. The National Assembly, meeting in plenary session, decided to repeal the provision in question, with 59 votes in favour and 1 vote against.

519. Moreover, the National Assembly added articles 43 and 44 in the amended Constitution, enshrining the right of access to public information and the corresponding remedy, the "habeas data" procedure.

520. Finally, legislative Act No. 1 of 27 July 2004 was published in Official Journal No. 25176 of Monday 15, November 2004. The act amended the Constitution, elevated the Ombudsman's Office to the rank of a constitutional body, eliminated the provision on disrespect and added the above articles 43 and 44.

521. The right of access to information took full effect with the Supreme Court judgement of 21 May 2004, handed down subsequent to a request by the Ombudsman's Office (in defence of that right) two years after the issue of decree No. 124 and declaring illegal that decree's provisions that restricted and weakened the spirit and the letter of act No. 6 of 22 January 2002 on transparency. The Ombudsman's Office described that judgement as "civil society's greatest victory".

522. On 1 September 2004, the new President of the Republic, honouring a personal commitment, repealed, as his first official act, the remaining articles of that notorious decree.

523. Fully in effect, act No. 6 of 22 January 2002 is expected to facilitate access to public information in the hands of civil servants, especially since the Constitution now guarantees access to personal and public information as a full-fledged fundamental right, no longer a mere derivative of the right to petition.

524. All public servants, without exception, including those working in the area of administration of justice, have been reminded that, under article 16 of act No. 6 of 22 January 2002, "State bodies refusing to provide information on the grounds that it is confidential or of restricted accessibility shall do so by means of a reasoned decision stating the reasons, provided for in this act, on which the refusal is based".

525. The continuous increase and updating of information stored in the Centre for transparency in public administration in the Ombudsman's Office are generally appreciated. The web site of that centre provides access to information on more than 60 bodies, including NGOs and political parties obliged by act No. 6 of 22 January 2002 to indicate their use of public funds; and, under article 11 of the same act, to the wages of more than 165,000 civil servants. That tool effectively assists citizens' audits, thus contributing to optimal use of limited state resources.

## Article 20

526. Article 85 of the Constitution reads as follows: "The social communications media are instruments of information, education, recreation and cultural and scientific dissemination. When they are used for the dissemination of publicity and propaganda, they shall not be contrary to health, morals, education and the cultural formation of the local and national conscience".

527. Article 39 of the Constitution prohibits the recognition of the legal status of associations that justify or promote racial discrimination (article 39).

528. The current family and minors code (48) specifically prohibits the dissemination of messages, programmes or advertisements vindicating crime; and provides (in article 485) that the media shall not broadcast any material, messages or advertisements that "contain pornography or pictures of violence and mutilation".

529. Under the above code, the Government shall regulate the implementation of the provisions in question through the Committee for family and minors code implementation.

530. That committee was indeed set up in 1997 but its creation coincided with the establishment of the Public services regulating body, which was subsequently assigned responsibilities related to radio and television.

531. Through act No. 49 of 1967, Panama adopted the International Convention on the Elimination of all Forms de Racial Discrimination, which in article 4 states that the States Parties condemn all propaganda and all organizations which are based on ideas or theories of racial superiority or which attempt to justify or promote racial hatred and discrimination in any form; and that, as part of measures to take, those States shall declare an offence punishable by law all dissemination of ideas based on racial superiority, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons, and also the provision of any assistance to racist activities, including the financing thereof.

**Article 21**

532. The right of assembly, namely, in a participatory democracy, the possibility for every human being to meet by common agreement with other persons at the same place in order to achieve a specific objective, is an essential aspect of freedom to act in general.

533. It is the right of every member of society to meet with others for a political purpose (a political right) or simply for deciding on common action (a civic right).

534. Those meetings, however, must have a peaceful aim and limited duration. If the duration is unlimited and the meetings have a permanent character, what takes form is an association.

535. The right of assembly is regarded as an essential public freedom. As such, it constitutes one of the pillars on which any community builds the exercise of its freedom of expression and one of the means for ensuring the practice of political rights. This freedom is the basis for political action through election campaigns and for civic movements and other legitimate demonstrations of support or protest.

536. In Panama, public demonstrations are one of the ways in which citizens may express social demands. Accordingly, any arrests of participants, when that happens, are acts against the freedom of assembly, even if eventually no charges are brought or the arrest lasts only a few days or hours.

537. Article 38 of the Constitution provides for the right of assembly in the following terms: "All inhabitants of the Republic shall have the right to assemble peacefully, without arms and for lawful ends. Public demonstrations or gatherings in open air shall not be subject to permission. Only previous notification of the local administrative authorities, 24 hours in advance, shall be required in order to hold such meetings".

538. The authorities may take police action to prevent or restrain abuses of that right, when it is exercised in a manner that causes or may cause traffic disturbances, breach of the peace or violation of the rights of others.

539. Persons wishing to exercise the freedom in question are required to inform the municipal authorities concerned of the date, hour, place or routing of the meeting, so that appropriate measures are taken to ensure that the event develops smoothly.

540. It is inconceivable that the exercise of this fundamental right should be prevented on the basis of mistaken ideas regarding such meetings. Despite the provision of article 38 of the Constitution, the right of assembly may legally be subject to restrictions by the authority.

541. The above provision regarding police action does not constitute an infringement of the right of assembly, where a restriction is established in a constitutional provision or provided by the law in an appropriate and reasonable manner, without affecting the essence of the right.

542. As all fundamental rights, freedom of assembly is limited by the rights of others and by appropriate public policy.

543. The right in question is infringed when there is massive repression, prohibition of assembly or obligation to obtain permission for holding a public meeting or demonstration.

544. Article 899 of the administrative code (title II (Moral police), chapter I) defines public order as general compliance with the Constitution and the law and obedience to the authorities expected to enforce them.

545. When a force majeure prevents an authority from freely fulfilling its duties and enforcing the Constitution and the law, public order is considered disturbed in the territory under the jurisdiction of that authority or in the part of that territory where the authority is not obeyed.

546. Public order comprises all elements necessary for the adequate functioning of the State and the institutions and for the enjoyment of the fundamental juridical rights by all persons inhabiting the national territory. Public order consists of the following elements: Security, peace, health and the morality.

547. In the criminal code, the right of assembly is regulated in article 161 of title II (Offences against freedom), chapter IV (Offences against the freedom of assembly and of the press). Under those provisions, prevention of a peaceful and lawful meeting carries a six- month to one-year prison term and a fine of 50 to 100 day-fines. If the offender is a civil servant, there is an additional three-year prohibition to exercise public responsibilities.

548. Under criminal code article 238, endangering the security of means of terrestrial, sea or air transport carries a sentence of one to six years in prison.

549. Where a number of persons hamper the circulation of any transport vehicle, consequently endangering the security of the occupants, the exercise of the right of assembly by those persons is characterized as disregard for accepted rules and is punishable as an offence.

**Article 22**

550. The right to freedom of association is defined as the ability and independent capacity of all workers to form lasting groups with a view to participating in the organization of relations in the production sector.

551. Freedom to participate in trade unions constitutes a specific form of the above right and therefore has the same constitutional value.

552. As one of the personal rights, article 39 of the Constitution provides for the right to exercise any profession or trade, which implies the possibility of obligatory membership of a professional body, payment of contributions or unionization.

553. The rest of this section addresses the subject of political parties in Panama, including the manner in which they are formed, the prerequisites for their establishment, their participation in the country's political and republican life and the current development.

554. The electoral code provides for two stages for the establishment and formation of the political parties. In first stage, the parties are nascent entities that have a series of rights and obligations, partly similar and partly dissimilar to those of legally recognized parties. In the second stage, those entities are recognized like legally constituted parties, with their own legal status and with full capacity to participate in an electoral process.

555. Under the electoral code, a group of citizens fully entitled to exercise their political rights who wish to form a political party shall submit to the Electoral Tribunal a petition written on a simple sheet of paper, requesting authorization to do so. This petition shall be addressed to the magistrate chairing the Electoral Tribunal and personally presented by the group's provisional representative to the general secretary. The petition shall include the name, gender, personal identity card number, residence address and signature of the petitioners; the name of the party; the description of its distinguishing symbol and, if available, the one of its flag, insignia, hymn and emblem.

556. That petition shall be accompanied by the party's draft statement of principles, government programme and articles of association. In that first stage, the petition shall be signed by at least 1,000 citizens; and a certificate to the effect that at least 50 petitioners reside in every province and at least 20 reside in every indigenous region.

557. The general secretariat of the Electoral Tribunal shall within eight days review all of the documentation and, if it is found in order, issue a resolution ordering that the petition be published. The petition shall be published twice in the bulletin of the Electoral Tribunal and, for three consecutive days, in at least one national newspaper. Within an eight-day time limit after that publication, the electoral prosecutor, any citizen or any political party that is legally recognized or in the process of establishment may oppose the above petition by filing challenge, on which the Electoral Tribunal must rule. In the event that no objection is formulated, the Electoral Tribunal shall issue a reasoned resolution authorizing the petitioners to form the political party; declaring open the period of registration of party members; instructing the electoral registration officials to proceed with the registration of the party throughout the country; and recognizing as the party's provisional representatives the persons indicated to that effect in the petition.

558. In the event that it raises an objection related to the supporting documents or the details of the petitioners, the Electoral Tribunal shall accord a 15-day time limit for correcting any formal or substantive defect. The most frequent problems include the omission of the number of party members and failure to provide evidence for the residence of 50 petitioners in each province and 20 petitioners in each indigenous region. A more serious problems would be the non-conformity of the statement of principles, government programme or articles of association with the provisions of the electoral code; or the proposal of a party name which is the same as the name of another party that has already been registered.

559. Should the petitioners fail to proceed with the requested corrections in a timely manner, the procedure shall be considered terminated and the Electoral Tribunal shall decide to take no further action. Once it is declared to be a party in formation, the party, in order to be declared legally constituted, shall have to ensure the registration of the required number of members. Until 2002, that number was 5 per cent of the total number of valid ballots cast in the last election for President and Vice-Presidents of the Republic. Reduced to 4 per cent under the 2002 electoral reform, it currently is - after the 2004 elections - 59,961. Of those members, at least 15 must be registered in each of at least 40 per cent of the districts in which the national territory is divided. Since there are currently 75 districts, there is a minimum requirement for 15 members to be registered in 30 districts. Once that number is attained, the party's legal representative requests the closing of the registration and the issue, by the Electoral Tribunal's electoral organization unit, of a document certifying that the party has attained the required number of members at national level and in 40 per cent of the districts. After a period for contesting member registrations, the party shall within a six-month time limit hold its constitutive assembly or convention, which must definitively approve the party's name, symbol, statutes, declaration of principles, programmes and, if available, flag, insignia, hymn and emblem: and designate the party's first national leaders and dignitaries. Subsequently, the party shall submit a formal request for recognition, presenting to that end the definitive approved statement of principles, articles of association, government programme and party symbols to the Electoral Tribunal, which shall, within three working days, transmit that request to the electoral prosecutor and, within 30 calendar days, decide, by resolution, whether or not to recognize the party's legal existence and, in the former case, order through the same document the registration of the party in the parties' registry.

560. Member registration is one of the most arduous tasks faced by political parties. Getting the necessary number of persons to register requires considerable organization and resources. That exercise is also complicated and costly for the Electoral Tribunal, which must make available to the parties, both those being formed and those that are legally recognized, the required electoral registers and registrars in all registration offices and stations in the country, where such facilities have been requested. The registration stations, set up at the parties' request subject to compliance with some criteria, are external to electoral tribunal premises. Currently, member registration for recognized parties takes place throughout the year in Electoral Tribunal offices and, at the parties' request, in registration stations on weekends. Member registration for parties in formation may take place from February to December. During four months in that period, which are determined by the Electoral Tribunal, registration takes place in Electoral Tribunal offices during regular working hours and in registration stations on Thursday, Friday, Saturday and Sunday subject to previous coordination between the party and the Electoral Tribunal. During the seven remaining months, registration takes place only in the offices of the Electoral Tribunal. With regard to the right to party registration, article 75 of the electoral code provides that any

citien shall be free to register in any party in formation or legally recognized and to explicitly or tacitly terminate at any time his/her membership of any such party regardless of registration in any other party. Such termination shall be tacit where a citizen registers with another political party, recognized in formation, without having previously eliminated his/her membership of the party to which he/she belonged earlier. Every year the Electoral Tribunal issues a decree setting the annual period for registration with parties in formation, including the four-month period for registration in registration stations. Under article 76 of the electoral code (notwithstanding the right to withdrawal and registration under the previous article), citizens may register with political parties in formation only during that annual period, unless the party in question rescinds its request. Non-compliance with that provision implies cancellation of both registrations, the first in the form of a tacit withdrawal through the second registration and the second registration through automatic cancellation on the grounds that it should not have taken place. Moreover, the voters concerned may receive a PAB 50 to 1,000 fine because such non-compliance is an administrative offence under article 358 of the electoral code.

561. Currently, the following seven political parties are legally established in Panama: "Partido Revolucionario Democrático", "Partido Popular", "Partido Panameñista", "Partido Molirena", "Partido Cambio Democrático", "Partido Liberal" and "Partido Unión Patriótica". The following two parties are in formation: "Partido Vanguardia Moral de la Patria" and "Partido Unión Nacional".

**Article 23**

562. It is difficult to define the term "family", especially when the definition sought should be used in common by all States Parties to ICCPR.

563. The writer Diaz de Guijaro (49) has defined the family as a "social, permanent and natural institution composed of a group of persons linked by a legal bond based on inter-gender relations and filiation".

564. Under Panama's family and minors code, the family is composed of natural persons linked by bonds of kinship or marriage.

565. The family bond is legally important because it gives rise to a broad range of rights and obligations, particularly regarding marriage, the father-child relation (especially in respect of parental authority), maintenance allowances, alimony and inheritance.

566. The legal status of the family is recognized in article 12 of act No. 3 of 17 May 1994, establishing the family and minors code.

567. With regard to article 23 of ICCPR, the Constitution, in title III, chapter II, articles 56 to 63, contains comprehensive provisions regarding protection of the family, marriage, parental authority, maternity and paternity.

568. Moreover, marriage is regulated through the family and minors code. Marriage admits of various forms and may be performed by various authorities.

569. Under article 26 of the family and minors code, marriage is a union voluntarily entered into by a man and a woman, with legal capacity, who are united an order to lead and share a life in common.

570. The family and minors code, book I, title I, section I, chapter III, provides for the following specific types of marriage:

(a) Marriage by power of attorney;

(b) Marriage in view of imminent death;

(c) Marriage aboard a vessel or an aircraft;

(d) De facto marriage;

(e) Marriage of indigenous groups.

571. Marriage by power of attorney takes place before a competent civil servant, with two legally unobjectionable witnesses and one of the contracting parties absent but having provided a special power of attorney for notarial documents. The resident contracting party must be present.

572. Marriage in view of imminent of death takes place before a competent civil servant (notary public), in the presence of two appropriate witnesses, when one of the contracting parties is in imminent danger of death.

573. Under the Constitution and articles 53 to 59 of the family and minors code, de facto marriage is possible between persons with the legal capacity to contract marriage, who have lived for five consecutive years in a stable one-to-one relationship, and has the force of a civil marriage.

574. Marriage aboard a vessel or aircraft is possible in the case of captains of ships or aircraft flying the Panamanian flag, who must then transmit the marriage documents to the Registry Office of Panama.

575. Marriages in Panamanian indigenous groups are classified into two categories:

(a) Marriage between Kuna people, celebrated by the Sahila, who is the competent authority in the autonomous territory (*comarca*) of Kuna Yala;

(b) Marriage between members of other indigenous groups: Civil recognition may be requested for such marriages, celebrated according to the respective traditions.

576. The above possibility of marriage according to various rights and traditions shows that the country is respectful of freedom of religion.

577. Under Panamanian legislation, the minimum legal age for marriage is 16 years for men and 14 years for women. Marriage shall be validated ipso facto, without need for a special statement, if one day after reaching the minimum age the persons concerned have been living together

without requesting validation of the marriage, or if the woman conceives before the minimum legal age for marriage or before validation of the marriage was requested.

578. The following persons may not enter into marriage:

(a) Persons already married;

(b) Persons of the same-sex;

(c) Ascending or descending relatives by consanguinity or adoption and collateral relatives to the second degree;

(d) Ascending or descending relatives by affinity;

(e) A convicted perpetrator of, or accomplice in, an accomplished, prevented or planned homicide, or a suspect in such a case during criminal proceedings, where the other person to enter the marriage is the spouse of the victim;

(f) Minors up to 18, without prior and explicit consent of the person having parental authority or guardianship;

(g) A woman whose marriage was dissolved, for 300 days after the dissolution or before giving birth if she is pregnant, unless she obtains a medical certificate stating that she was not pregnant during the dissolution of the marriage;

(h) A father or mother administering the assets of his/her underage children, until a judicial inventory of those assets has been drawn up;

(i) A guardian and his/her descendants, where the other person entering into marriage is the person under guardianship, until, after termination of the guardianship, the respective accounts have been judicially approved.

579. The following persons may perform marriages:

(a) Municipal, civil and family judges;

(b) Priests of cults with a legal status in Panama;

(c) Consular agents, in the case of marriage of Panamanians abroad;

(d) In special marriages, the persons authorized to that effect by the law;

(e) Notaries public;

(f) The National, the Deputy National or a Regional Director of the Registry Office (act No. 31 of 25 July 2006).

580. According to the law, a marriage shall take effect as from the celebration and registration of the marriage in the Registry Office or, in the case of a de facto marriage, upon verification.

581. According to the law, the system of matrimonial property applicable shall be the one stipulated by the spouses in the marriage settlements, without any limitations other than those provided for by the law.

582. A marriage may be dissolved as a result of death of one of the spouses, divorce or annulment.

583. Act No. 31 of 25 July 2006, "regulating the Bureau of vital statistics and other legal acts related to the civil status of persons and reorganizing the National Registry Office Directorate of the Electoral Tribunal", which replaced act No. 100 of 30 December 1974 "reorganizing the Registry Office", regulates all matters related to the registration of marriages.

584. The Electoral Tribunal has ensured equality of the rights and obligations of the spouses in respect of all aspects of a marriage. With regard to marriage dissolution, measures have been taken for the protection of the minor, in the framework of provisions related to the Registry Office.

585. Under Article 49 of act No. 31 of 25 July 2006, de facto marriage is recognized subject to a reasoned resolution signed by a competent authority or the National or Regional Directorate of the Registry Office.

586. The right to registration of a de facto marriage in the Registry Office is truncated where either spouse is still bound by an earlier marriage not dissolved through a divorce. In Panamanian society, couples often separate without seeking a formal divorce and start a new life with another person. After a while, they decide to formalize the new union, thinking that, to meet the requirements for entering a de facto marriage, they simply need to file a request. only to find out that their request is denied on the grounds that an earlier marriage exists. The statistics of the National Registry Office Directorate reveal the considerable extent of that situation, which even included cases where the request is filed after the death of the person bound by an earlier marriage.

587. Another type of complication, arising in relation to de facto marriages as a result of lack of communication between the judicial authorities and the National Registry Office Directorate, occurs when both bodies process the same file and issue different judgments or resolutions. Although a judgment prevails over a resolution, registration of such a marriage is impossible.

588. Under article 76 of act No. 31 of 25 July 2006, the National Registry Office Directorate is under an obligation () to register marriage settlements, protecting and respecting the decision of the couple to safeguard their individual assets antedating the marriage and, in case of divorce, splitting equally whatever assets were generated after the marriage.

589. In general, the National Registry Office Directorate is under an obligation to make appropriate entries regarding marriages in the form of explanatory notes, noting any settlements, marriage dissolutions after the death of either spouse, judicial separations, divorces or marriage annulments through an enforceable decision. This procedure protects the rights of spouses and of children born to a married couple because the relevant documents, if not registered, have no effect with regard to third parties and no evidential value.

590. The Electoral Tribunal has verified and authenticated all documents related to marriages, including those having occurred abroad, and updates its database on an ongoing basis subject to strict security requirements designed to avoid the registration of marriages that are not valid under Panamanian law.

591. The family bond is legally important because it gives rise to a broad range of rights and obligations, particularly regarding marriage, the father-child relation (especially in respect of parental authority), maintenance allowances, alimony and inheritance.

592. The Government has developed a series of provisions designed to protect the family but the authorities entrusted with their implementation have not been able to enforce them because of widespread lack of awareness of the responsibility that maintaining a family implies, as shown by the great number of, inter alia, divorces, single mothers, abandoned children, women assaulted by their partners and child-support payments in arrears.

593. When parents fail to make child-support payments, which is often the case, it takes the competent authority handling the civil proceedings longer than two months to summon the liable party to the court for payment of the amount due. In the meantime, meeting the basic needs of the children concerned is problematic. Moreover, if the parent in default is unemployed and unable to make the required payment, the State provides no assistance to the beneficiary family member.

**Article 24**

594. With regard to special measures for the protection of children, the Constitution sets the age of adulthood at 18. Moreover, under act No. 15 of 6 November 1990, through which Panama ratified the Convention on the Rights of the Child, a child is defined as a person under 18.

595. The Constitution, the family and minors code and other laws provide protection for certain groups of children and adolescents depending on their age, as described below.

596. Under article 70 of the Constitution, employment of children under 14 and night work for those under 16 shall be illegal; and so shall be the employment of children under 14 as domestic servants and of all children and women in unhealthy occupations.

597. Book II, title V of the family and minors code regulates the employment of minors, setting the minimum age for employment at 14 and providing for appropriate work conditions. Article 510 of the same code prohibits the employment of persons under 18 on jobs that by their nature or related conditions imperil their life, health, moral integrity or school attendance.

598. A series of Government regulations that prohibit dangerous work for children includes executive decree No. 19 of 12 June 2006, establishing a list of such types of work and characterizing its compilation as an obligation of the State; and act No. 18 of 15 June 2000, adopting the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).

599. With respect to the criminal responsibility of minors, article 63 of the Constitution provides that the functioning of a special jurisdiction over minors, which shall take cognizance of juvenile behaviour problems, shall be organized and determined by law. Under Article 28

of the Constitution, the prison system shall be based on principles of security, rehabilitation and social defence and prisoners who are minors shall be governed by a special system of custody, protection and education.

600. Before the introduction of the system of juvenile criminal responsibility in Panama, criminal offences by minors were not punished as such but were considered troubled behaviour. No distinction was drawn between minors as victims of rights violations and miners as offenders. Generally speaking, the same treatment was reserved to both juvenile categories, namely, indefinite internment in the Juvenile Court, without any regard for due process and for the rights and procedural guarantees enshrined in the Constitution.

601. Panama's system of adolescent criminal responsibility is based on such international legal instruments has the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Peking Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Arrived of Their Liberty; the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); and the Convention on the Right to the Child.

602. Act No. 40 of 26 August 1999, establishing the system of adolescent criminal responsibility, sets the age for such responsibility at 14. The human and financial resources necessary for the implementation of that act were not made available at the time of its adoption. In view of inadequate resources and continuing juvenile delinquency, a number of amendments to that act were introduced through act No. 46 of 2003, including an increase of prison sentences from five to seven years. Another amendment was introduced under act No. 48 of 2004, characterizing the crimes of gangsterism and possession of and trade in prohibited weapons.

603. The rights provided for in article 24 of ICCPR are mainly guaranteed in the Constitution, as part of individual and social rights and duties. Title III of the Constitution stipulates non-exclusively the fundamental rights and guarantees enjoyed by any individual. Being an individual, every child therefore enjoys all of the fundamental and social rights enunciated in that text.

604. Under article 56 of the Constitution, the State shall protect the physical, mental and moral health of minors and shall guarantee their rights to support, health, education and Social Security.

605. Under article 60 of the Constitution, parents shall have, with respect to their children born out of wedlock, the same duties as towards their children born in wedlock; that all children shall have the same rights of inheritance in intestate successions; and that the rights of minors or incapacitated children and of destitute parents in testate successions shall be recognized by law.

606. Moreover, article 61 of the Constitution provides for the protection of the child with regard to paternity by abolishing all classifications as to the nature of the relationship.

607. Under articles 142 and 143 of the Constitution, the Electoral Tribunal shall be the sole entity responsible for directing, supervising and verifying the recording of vital statistics, deaths, naturalizations and other legal acts related to the civil status of persons. To that end, the National Registry Office Directorate was created as a unit answering to the Electoral Tribunal and solely responsible for recording births, marriages, deaths, naturalizations and other acts and legal

documents related to the civil status of persons and for adding appropriate explanatory notes to the above entries.

608. Act No. 31 of 25 July 2006, "regulating the Bureau of vital statistics and other legal acts related to the civil status of persons and reorganizing the National Registry Office Directorate of the Electoral Tribunal", replaced act No. 100 of 30 December 1974 "reorganizing the Registry Office".

609. Under act No. 100 of 1974, a birth should be registered within 15 days, including all infants born alive, even if they died shortly after birth, provided that death occurred when the infant had been outside the womb and fully separated from the body of the mother. Moreover, there is an obligation to declare and register births for the father or mother of the infant, the other ascending relatives, the nearest adult relative living in the house where the birth took place, the head of the establishment that takes charge of an abandoned new born and the person who finds such a new born.

610. Under article 28 of act No. 31 of 25 July 2006, all infants born alive shall be registered, even where they die after birth, provided that the infant lives for at least one moment after separation from the womb.

611. Both act No. 100 of 1974 and act No. 31 of 2006 guarantee a child's right to have a name, disallowing names injurious to persons or confusing with regard to identity or misleading with regard to gender. The Electoral Tribunal has issued several decrees on that matter. Article 32 of act No. 31 of 2006 provides that the given name, the last names and the gender of the infant and the date of birth shall be indispensable elements in birth registration.

612. Under act No. 31 of 2006, in order to protect the interests of the minor through the timely registration of his/her birth, the health facility and medical staff attending the childbirth are under an obligation to transmit the respective clinical report within two days after the birth. If then the birth is not declared within a year, the Registry Office shall order registration based on the data in that report.

613. The Panamanian legislation allows an unmarried mother to have her children recorded on the birth certificate with their paternal and maternal last names, in that order, in order to preserve the clarity of father-child relationships (article 41). If, however, after the registration the father recognizes his paternity of the minor concerned at the Registry Office, the order of the last names shall be established in accordance with the instructions of both parents.

614. In the case of minors characterized as abandoned, the person declaring the birth may assign the last name that he/she wishes.

615. With regard to Registry Office entries, Panamanian law ensures equal treatment of indigenous persons born in the Republic by guaranteeing their right to be registered at birth with their names entered in their own language.

616. The adoption of a minor shall take place at the request of a party or on the initiative of the respective authority under strict confidentiality.

617. In addition to births comparing within the national territory, the following births shall be recorded in the Registry Office: Births of children born abroad of a Panamanian father or mother; births recorded on the basis of an enforceable judicial decision issued in a hearing on the child's civil status; births of aliens granted permanent residence in the country by the competent authority; births of naturalized Panamanians; and births of infants declared abandoned.

618. Paternal filiation shall be indicated in the birth registration document or in the appropriate book of annotations on the basis of voluntary personal recognition by the father at the Registry Office. Act No. 39 of 30 April 2003, amending and adding articles to the family and minors code regarding the recognition of paternity and containing other provisions, provided that code with articles guaranteeing the registration of children not recognized voluntarily by the father. In that connection, the Electoral Tribunal issued decree No. 24 of 21 August 2003, regulating act No. 39 of 30 April 2003. The attached table provides consolidated data on the implementation of act No. 39 of 30 April 2003 over the period November 2003 to June 2005.

619. Despite the Electoral Tribunal's efforts to guarantee the registration of all births, there is an under-registration problem, as some persons are registered after the age of two. Despite a significant reduction of under-registration by the Registry Office through incentives such as the project entitled "A good start in life", the main progress achieved with regard to that problem is that it has been recognized.

620. The work of the Registry Office is hampered by budgetary problems which prevent it from conducting registration missions in the less accessible areas. Moreover, illiteracy in the indigenous regions translates into a lack of interest in having children registered. The problem is compounded by the fact that religious groups in some indigenous regions prohibit the integration of their members into Panamanian society. Nevertheless, the Registry Office employees approximately 300 auxiliary registrars, mainly in the less accessible indigenous regions, with a view to the timely registration of minors.

621. In the last two years, such bodies as MINSA, the Office of the First Lady, the Instituto Panameo para la Habilitación Especial (IPHE, "Panamenian institute for special empowerment") and the Electoral Tribunal, with the help of the UNICEF, have joined efforts to promote the timely registration of infants through the offer of baby layette as an incentive.

622. Moreover, considerable progress has been made with regard to the registration of Panamanians born within Costa Rican territory, in the border area between the two countries. A health centre has been made operational in Río Sereno, as a first significant step towards discouraging Panamanian indigenous women from going to Costa Rica to give birth. Earlier, as from 1 March 1998, a permanent vice-consul had been assigned to the community of San Vito, Costa Rica to ensure the registration of vital statistics, particularly births, of Panamanians in the Costa Rican area in question.

623. The following table shows the development of birth registrations in the nine provinces and three regions of the Republic of Panama: (50)

| Province | 1985-1989 | 1990-1994 | 1995-1999 | 2000-2005 |
|---|---|---|---|---|
| | (Per cent) | | | |
| Bocas del Toro | 29.29 | 28.98 | 29.85 | 13.12 |
| Coclé | 10.82 | 8.80 | 6.55 | 3.90 |
| Colón | 18.03 | 16.02 | 11.89 | 7.28 |
| Chiriquí | 38.49 | 36.52 | 28.40 | 14.72 |
| Darién | 61.77 | 15.49 | 20.83 | 9.50 |
| Herrera | 7.64 | 10.35 | 6.08 | 5.38 |
| Los Santos | 9.53 | 8.50 | 4.03 | 4.18 |
| Panamá | | | | |
| Veraguas | 10.41 | 7.04 | 5.29 | 3.81 |
| Kuna Yala | 40.00 | 22.77 | 15.98 | 9.55 |
| Emberá | - | 45.48 | 31.78 | 14.09 |
| Ngobe Bugle | - | - | 38.52 | 20.52 |

624. Although article 24 of ICCPR provides for immediate registration of children after birth, the actual situation in the less accessible autonomous territories (*comarcas*) of the country is quite different. In those areas, there is a lack of health centres and infants are still delivered by midwives in the homes. The job of the auxiliary registrars is to seek out those cases. Such work requires training but, despite the requests made every year by the Registry Office, the relevant budget allocations are insufficient. The problem has been addressed through support from NGOs and such organizations as UNICEF. Registrations in those areas are delayed beyond the two-year time limit specified in article 24 of ICCPR and act No. 31 of 25 July 2006.

625. Currently, sub-registration is combated through immediate registration in the areas where that is possible and through the reduction of delays by means of the establishment of better communications and health centres, aimed at increasing the number of childbirths carried out by health professionals, in the less accessible areas.

626. Under article 8 of the Constitution, Panamanian nationality is acquired by birth, naturalization or constitutional provision. Under article 9 of the Constitution, the following are Panamanian by birth: Those born in the national territory; the offspring of parents who are Panamanian by birth, born outside the territory of Panama, provided they establish their domicile in the national territory; and the offspring of parents who are Panamanian by naturalization and are born outside the territory of Panama, provided they establish their domicile in the national territory and state their desire to elect Panamanian citizenship, not later than one year after reaching legal age, namely, the age of 18, at which they may become citizens of the Republic (under article 131 of the Constitution)

627. Under article 11 of the Constitution, nationality by constitutional provision is acquired by all children born abroad who, before their seventh birthday, were legally adopted by Panamanian nationals, in which case nationality is conferred once the adoption is entered in the Registry Office. Before the 2004 constitutional reform, children born abroad who, before their seventh birthday, were legally adopted by Panamanian nationals could acquire Panamanian nationality if they established their domicile in Panama and, not later than one year after they reached legal age (18 years), stated their intention to elect Panamanian citizenship.

## Article 25

628. Under article 2 of the Constitution, public power emanates solely from the people and it is exercised by the State through legislative, executive and judicial branches of government which act within limits and separately but in harmonious cooperation.

629. Within that context, where public power is exercised by the people through a republican government, political participation in Panama is democratic. Article 19 of the Constitution provides that there should be no public or private privileges or discrimination by reason of race, birth, social class, gender, religion or political ideology.

630. In Panama, the fundamental individual rights, such as freedom of expression, assembly and association, are constitutionally guaranteed. Moreover, in May 2005, the National Assembly repealed the so-called "gag laws ", mentioned earlier, which contained measures regarding the media and publishing and regulated journalistic activity. That repeal strengthened freedom of expression.

631. Another pillar of Panama's democratic system is the institution of suffrage, which, according to the Constitution, is a right and a duty of all citizens. Under article 132 of the Constitution, political rights and the performance of public functions are reserved to Panamanian citizens, namely, all Panamanians over 18, regardless of gender. Citizenship is suspended by express or implied renunciation thereof or for penalties according to the law.

632. Article 136 of the Constitution is worded as follows:

> "The authorities are obliged to guarantee the freedom and honesty of the suffrage. It is prohibited:
>
> 1. To give direct or indirect official support to any candidate for office in a popular election, even if the means used are veiled.
>
> 2. To allow publicity or party affiliation activities in public offices.
>
> 3. To collect funds or contributions from public employees for political purposes, even under the pretext of voluntary contributions.
>
> 4. To impede or hinder a citizen in obtaining, keeping or personally exhibiting his/her individual identity card.To collect funds, contributions, charges or amounts withheld from private-sector workers by the employers for political purposes, even under the pretext of voluntary contributions.
>
> Electoral offences shall be characterized and their penalties fixed by law."

633. Under article 142 of the Constitution, an autonomous tribunal is established in order to guarantee the freedom, honesty and effectiveness of popular elections. That Electoral Tribunal is recognized as a legal entity with its own assets and the right to administer them.

634. The responsibilities of the Electoral Tribunal include interpreting and implementing electoral law and directing the electoral procedures. Investigation into electoral offences

and imposition of respective penalties are assigned to the Office of the electoral prosecutor, which comprises sub-agencies, (51) and to electoral criminal judges with a view to significantly reducing such electoral offences, occurring in past years, as identity card forgery, sale of votes, double voting and theft of ballot boxes. The electoral reform of 1993, which had introduced the single ballot paper, had also contributed significantly to combating the above offences.

635. In accordance with democratic procedures, the vote in Panama is secret. There are procedures to facilitate the voting of blind and other disabled citizens through assistance by a person of trust. On election day, polling stations are sealed off and properly protected. After voting hours, namely, 7 a.m. to 4 p.m., vote-tallying begins in public, and unused ballot papers are burned. In each polling station, the electoral board members and every political party representative present during the voting and vote-tallying are entitled to a copy of the vote-tallying record. That also applies to the meetings of the electoral precinct vote-tallying boards and the National vote-tallying board, with a view to guaranteeing the impartiality and accuracy of the outcome.

636. Electoral legislation provisions designed to protect the right to vote include article 258 of the electoral code, which provides that "during voting hours, no voter may be arrested, detained or compelled to appear before Government authorities or officials for any civil, community or police procedures before casting his/her vote". Moreover, the institution of the "electoral privilege" provides protection, under criminal and labour law, to persons directly involved in the electoral process, preventing political persecution, a frequent practice during elections in past years.

637. Panama's electoral machinery includes electoral bodies (electoral code, article 123) responsible for carrying out the voting and vote-tallying processes at the national, circuit, district and community levels (article 132). Accordingly, contrary to what happens in most countries in the region, election- or referendum-related proclamations are not made by an electoral organization but by the people, properly represented, organized and informed. The electoral bodies described, including the Electoral Tribunal, have been established in order to ensure three elections and an accurate election outcome.

638. The Body of electoral delegates created as part of the 1992 electoral reform has been successful in the role of a group of "mediators" assisting the Electoral Tribunal in ensuring law and order during the electoral processes

639. Citizenship is the basic prerequisite to participating in order to exercise the right to elect and the right to be elected.

640. Under electoral code article 8, prerequisites for exercising right to vote comprise being a Panamanian citizen by having been born in the national territory, by having a Panamanian parent or through naturalization (article 131 of Constitution). Moreover, to vote one must be at least 18 years old, figure in the final electoral register of the respective electoral precincts (depending on the place of residence), have a personal identity card and be entitled to full enjoyment of civil and political rights.

641. Persons not entitled to vote are those having lost their civil rights (as a consequence of a penalty) in connection with a criminal or electoral offence or having a reduced mental ability (under electoral code articles 8 and 9).

642. Although, save for the restrictions established in electoral code article 9, all persons meeting the prerequisites stipulated in electoral code article 8 may vote, yet there are citizens entitled to vote who in practice may not exercise that right. They are hospitalized patients, older persons living in homes for the elderly, Panamanians residing abroad and detainees who have either not yet been sentenced or have been sentenced without losing their civil rights. That situation calls for urgent improvements.

643. As the rest of the region, Panama is confronted with the problem of voters residing abroad. As early as the 1997 electoral reform, the Electoral Tribunal conducted surveys regarding the viability of ensuring their enjoyment of that right. However, such logistic difficulties as voting security issues and the preparation of electoral rolls, requiring cooperation with the diplomatic corps, prevented the implementation of those plans, which were therefore suspended in the 2000 electoral code reform. However, all possible steps, for instance the compilation of lists of Panamanians abroad, have been taken in cooperation with the Ministry of Foreign Affairs with a view to conducting that type of suffrage in the future.

644. With regard to the vote of prisoners, hospitalized patients and older persons living in homes for the elderly, relevant amendments to the law are being considered. The 2004 reform committee had proposed to lift the prohibition of voting in the institutions concerned in order to allow for the exercise of the right. There are, however, still obstacles, such as voting security, the safety of electoral staff in the detention facilities and the preparation of a list of voters in a hospital, where, unlike in homes for the elderly, the residents are transient. The "mobile ballot box"may be a solution.

645. The national statistics demonstrate the citizens' growing interest in voting.

| Year and event | Electoral roll | Votes cast |
|---|---|---|
| 1992 referendum | 1,397,003 | 559,651 |
| 1994 elections | 1,499,451 | 1,104,578 |
| 1998 referendum | 1,718,870 | 1,123,901 |
| 1999 elections | 1,746,989 | 1,330,730 |
| 2004 elections | 1,999,553 | 1,537,342 |
| 2006 referendum | 2,132,842 | 924,029 |

646. With regard to the right to be elected, the relevant constitutional provisions (such as article 179 of the Constitution) and electoral rules (the elections regulation) establish clear prerequisites. For instance, to be elected President or Vice-President, one must be Panamanian by birth, have reached 35 years of age, not have been convicted for a criminal offence or a political crime and not have appeared, in the six months preceding candidacy, in the list of non-eligible persons provided for in electoral code article 26 (and including, inter alia, such civil servants as ministers, the National Police director and deputy director, magistrates and judges).

647. Similar prerequisites apply to deputies, mayors, city and town councillors, save that in such cases the minimum age is 18 and local residence is required for running in local elections.

648. Independent or free candidates, who are not presented by political parties, may also run for office (article 226 of the electoral code). They need to collect a specified number of signatures in order to show that their candidacy enjoys popular endorsement

649. Of a total of 264 independent candidates who ran in the 2004 elections, 14 were elected town councillors and one was elected mayor.

650. The institution of independent candidacies offers civil society an opportunity to participate in decision-making at the Government level. Subsequent to the 2004 constitutional reform, that possibility is open to candidates to the office of member of the National Assembly but not to candidates for President or Vice President of the Republic. Although the Constitution is silent on that issue, the Supreme Court judgement of 23 November 1998 confirmed electoral code article 205, which allows only party members to run for those offices. In view of that legal gap in the Constitution, the legislators should decide.

651. Electoral subsidies are an important element in Panamanian democracy inasmuch as they assist party and independent candidates in meeting the cost of election campaigns. The subsidy covers part of the parties' operational and administrative expenses and comprises a 25 per cent component for offering political training to party members, with the proviso that 10 per cent of party officials must be women. The measure actually promotes women's political participation.

652. This type of public financing is in keeping with electoral code article 210, which stipulates that 30 per cent of a political party's candidates in intra-party elections for filling party offices or in popular elections shall be women.

653. The above measure has proved effective. In the 2004 general elections, there were 785 women main candidates, accounting for 14.02 per cent of the total number of candidates.

654. The public financing of political parties, or electoral subsidy, has been questioned by various sectors of Panamanian society, which consider that those funds should be spent on other national priorities. However, the objective of electoral subsidy is to boost Panamanian democracy by strengthening the political parties, whose role under article 138 of the Constitution consists in contributing to the formation and manifestation of the popular will and serving as fundamental instruments of political participation. It is in that spirit that campaign, administrative and training expenses are subsidized. Moreover, the Electoral Tribunal is making considerable efforts to ensure accountability with regard to the public financing of political parties.

655. Criticism has also been addressed to party officials with regard to the way in which they are chosen, to the intra-party decision-making procedures and to the selection of candidates in the popular elections. Accordingly, as part of the electoral reform process, weaknesses in that area have been reduced through the introduction of the secret ballot in intra-party elections and of primary elections, which are obligatory with regard to presidential elections and optional in the other cases.

656. As part of the 2003 electoral reform and in order to encourage the activities of new parties and provide them with greater leeway regarding their participation in future elections, the percentage of votes obtained in the previous election as a criterion for the continued existence of political parties has been reduced from the 5 to 4 per cent.

657. During the electoral process, political parties and candidates seek to attract supporters through advertising, thereby exercising a right enabling them to explain their platform.

658. Electoral law provides the parties with a series of election-related facilities, including the use of State-run media on equal terms and the free import of vehicles for party activities.

659. When paid by legal entities, political advertisements must be endorsed and signed by a legal representative of the entity.

660. Under article 188 of the Electoral Code, political parties and candidates are obliged to keep a record of the private contributions that they receive for their operational activities or their campaigns. That information, however, is confidential and may not be published by the Electoral Tribunal, unless criminal law violations are suspected, in which case the Electoral Tribunal shall share it with the Public Prosecutor's Department or transmit a relevant request to the judicial authorities.

661. The 1997 election reform addressed the controversial issue of opinion and exit polls. No opinion polls may be published or disseminated in the last 10 calendar days preceding an election. The objective is to prevent such measurement instruments from becoming tools for manipulating voter opinion.

662. Repeal of public mandate is a democratic institution used in Panama where an elected official has acted against interests of his/her party or constituents. There are two types of such a repeal. One type applies to National Assembly members and occurs at party level, although, in accordance with the last constitutional reform, the voters of the electoral district concerned may be consulted.

663. The second type of repeal of public mandate is of a popular character. Through procedures established in act No. 19 of 9 July 1980, voters may repeal the mandate of a town councillor. The same act provides for cases where a town councillor may forfeit his/her mandate automatically as a result of certain offences.

664. In Panama, semi-direct democracy is a system practiced as a complement to representative democracy, through a referendum or a plebiscite. Both procedures are regulated in the electoral code, title VI, chapter 14.

665. The referendum is a mechanism used to amend the Constitution, adopt international treaties or determine such issues as the construction of the third set of locks of the Panama Canal. A plebiscite is used to consult the people on a mandate repeal.

666. Contrary to other countries, in Panama there are no local popular assemblies, and representative democracy is exercised through local Governments. In that system, local public affairs are managed by community boards, comprising a municipality, which is administered by the mayor. The collegiate body consisting of the city or town councillors as a whole is called municipal council.

667. One of the cornerstones of Panamanian democracy is the popular representation system used for establishing the seats of the National Assembly. A mixed system is used, consisting in majority-based representation with regard to 17 one-deputy electoral districts, where the candidate having obtained the greatest number of votes is elected, and in proportional representation with regard to 24 multiple-deputy electoral districts, where two or more candidates are elected through a "quotient-remainder" method.

668. This mixed approach to popular representation produces a moderate multiparty system, comprising two major opposing parties, and a series of small parties that may hold the balance of power and are therefore important.

**National statistics**

669. Of the 602 members of Parliament elected through in elections during the period 1948-1994, 33 (5.5 per cent of the total) have been women.

670. In the elections held on 2 May 1999, of the 1519 elective offices, women should have occupied 456 according to the 30 per cent quota for women. Instead, they attained only 9.9 per cent of that quota.

671. In the period 1999-2004, of the 13 ministerial posts, women occupied three, thereby accounting for 23.1 per cent of the executive branch of Government at that level. Only two women were designated deputy ministers. That happened in the Ministry for youth, women, children and the family, where the percentage of women at that level was 15.4 per cent.

672. In the period 2004-2009, there are three women ministers and four women deputy ministers. In the National Assembly, 13 deputies and 34 alternate deputies are women.

**Article 26**

673. Since its creation in 1956, the Electoral Tribunal has consistently guaranteed the individual political rights of Panamanian male and female citizens, and in particular the right to active participation in the national political life as a member of a political party, candidate to an office or voter. Since its inception, the Electoral Tribunal has based its activity on the electoral code which, at various political stages, has undergone reforms aimed at promoting the citizen's political rights.

674. Since the electoral code is the law specifically designed to govern elections, it reflects all of the provisions regarding political and citizen rights whose respect the Republic must guarantee and ensure that all citizens participate in the political process according to their rights.

675. To this date, the electoral code has been reformed five times with a view to enhancing the participation of the political parties and the independent candidates and improving the performance of the Electoral Tribunal.

676. The 1993 reform modified the proportional representation system in multi-deputy electoral districts, introducing the use of the remainder. That reform also eliminated the Electoral Tribunal's power to ex officio invalidate an election and, in order to avoid mistrust, left it to the people to decide, through appropriate procedures, whether to contest an election involving a specific electoral district or the entire country.

677. The 1997 reform, under Act no. 22 of 14 of 1997 July, introduced a series of significant changes and has been the most important national reform to this date. Some of those changes were the following: The possibility of Panamanians abroad to vote; the political parties' obligation to hold primary elections for designating a candidate to elections for President of the Republic, while primaries for other offices remained optional; the establishment

of the National Council of political parties as a consultative body to the Electoral Tribunal; the public financing of political parties; and, with regard to human rights, the political parties' obligation, inter alia, to ensure that at least 30 per cent of the candidates to intra-party and other elections were women.

678. The last of the above changes was the most significant reform in the area of human rights. No such guarantee existed before, while currently the political parties promote women's participation in such elections.

679. In the 1994 elections, of a total of 14,174 candidates, 12,271 (86.6 per cent) were men, and 1,903 (13.4 per cent) were women. In the 1999 elections, of a total of 15,665 candidates, 13,307 (84.9 per cent) were men, and 2,358 (15.1 per cent) were women. That increase in the proportion of women candidates by 1.7 percentage points occurred before the reform introduced by act No. 60 of 17 December 2002 took effect.

**Table 1**

Electoral Tribunal
National Directorate of Electoral Organization
Department of electoral statistics

**Women's political participation in the elections of 1994 and 1999**

| Office concerned | Elections | | | | | | Increase in the period 1994 - 1999 |
|---|---|---|---|---|---|---|---|
| | 1994 | | | 1999 | | | |
| | Number of offices | Number of women | Percentage | Number of offices | Number of women | Percentage | |
| President | 1 | 0 | 0.0 | 1 | 1 | 100.0 | 1 |
| Vice-Presidente | 2 | 0 | 0.0 | 2 | 0 | 0.0 | 0 |
| PARLACEN deputies | - | - | - | 20 | 5 | 25.0 | 5 |
| Alternates | - | - | - | 20 | 8 | 40.0 | 8 |
| Legislators | 71 | 6 | 8.5 | 71 | 7 | 9.9 | 1 |
| Alternates | 142 | 25 | 17.6 | 142 | 26 | 18.3 | 1 |
| Mayors | 67 | 9 | 13.4 | 74 | 10 | 13.5 | 1 |
| Alternates | 134 | 23 | 17.2 | 148 | 25 | 16.9 | 2 |
| Representatives | 511 | 55 | 10.8 | 587 | 61 | 10.4 | 6 |
| Alternates | 511 | 55 | 10.8 | 587 | 75 | 12.8 | 20 |
| Councillors * | 24 | 2 | 8.3 | 7 | 1 | 14.3 | … |
| Alternates | 24 | 14 | 58.3 | 7 | 1 | 14.3 | … |
| **Total** | **1,487** | **189** | **12,7** | **1,666** | **220** | **13.2** | **45** |

- : Zero.

... : Comparison is impossible because of a decrease in the number of councillors.

* : That number of councillors decreased as a result of new electoral districts.

**Table 2**

**Candidacies to the office of President of the Republic by political alliance or party**
**General elections of 2 May 1999**

| Political alliances and parties | Total | Sexo | | | |
|---|---|---|---|---|---|
| | | Men | Per cent | Women | Per cent |
| Alianza Nueva Nación (a) | 3 | 3 | Of | 0 | 0.0 |
| Alianza Acción Opositora (b) | 3 | 2 | 66.7 | 1 | 33.3 |
| Alianza Unión Por Panamá (c) | 3 | 2 | 66.7 | 1 | 33.3 |
| **Total** | **9** | **7** | **77.8** | **2** | **22.2** |

*Source*: Department of electoral statistics.

(a) PRD, Papa Egoro, Solidaridad and Liberal Nacional.

(b) PDC, Renovación Civilista, PNP and Liberal.

(c) Arnulfista, Molirena, Morena and Cambio Democrático.

680. That 1999 election of Ms. Mireya de Moscoso as Panama's first woman President of the Republic demonstrates that the participation of women as voters and as candidates picks up momentum and reveals progress towards the Electoral Tribunal's goal to ensure the political participation of all citizens without any discrimination.

681. Despite the promulgation of act No. 60 of 17 December 2002, women's participation declined, since in the 2004 elections there were only 1909 women candidates. The causes are factors unrelated to the Electoral Tribunal's efforts to strengthen the role of women in elections.

**Table 3**

Electoral Tribunal

**Women's participation in the elections of 2 May 2004**

| Office concerned | Women candidates | | | Women elected | | |
|---|---|---|---|---|---|---|
| | Total | Main | Alternate | Total | Main | Alternate |
| President | 1 | 0 | 1 | 0 | 0 | 0 |
| PARLACEN deputy | 57 | 25 | 32 | 10 | 6 | 4 |
| Deputy | 307 | 74 | 233 | 46 | 12 | 34 |
| Mayor | 256 | 77 | 179 | 39 | 7 | 32 |
| Representative | 1,274 | 565 | 709 | 147 | 61 | 86 |
| Councilor | 14 | 5 | 9 | 1 | 0 | 1 |
| **Total** | **1,909** | **746** | **1,163** | **243** | **86** | **157** |

*Source:* General Secretariat of the Electoral Tribunal.

682. The following table illustrates the breakdown of the number of party-affiliated and independent women voters by province in the general elections of 2 May 2004. Women represented 51 per cent of the overall total number of voters.

**Table 4**

Electoral Tribunal
National Directorate of Electoral Organization

**Breakdown of women voters, with and without party affiliation, by province in the elections of 2 May 2004**

| Province | Total number of women voters | Women without party affiliation | Women with party affiliation |
|---|---|---|---|
| Bocas del Toro | 18,345 | 11,018 | 7,327 |
| Coclé | 57,025 | 32,081 | 24,944 |
| Colón | 50,424 | 29,517 | 20,907 |
| Chiriquí | 103,842 | 58,958 | 44,884 |
| Darién | 9,505 | 5,837 | 3,668 |
| Herrera | 34,986 | 20,740 | 14,246 |
| Los Santos | 30,895 | 18,563 | 12,332 |
| Panama | 388,295 | 109,106 | 279,189 |
| Veraguas | 58,941 | 36,034 | 22,907 |
| Comarca Kuna Yala | 8,224 | 6,691 | 1,533 |
| Comarca Ngöbe Buglé | 23,279 | 12,847 | 10,432 |
| **Total** | **783,761** | **341,392** | **442,369** |
| Total number of votes cast in the country | 1,537,342 | | |
| Percentage of women's votes | 51.0 | | |

683. The 25 per cent minimum component of the aforementioned electoral subsidies, which is earmarked for political training, contributes to the operation of party offices in each province and autonomous territory (*comarca*) with a view to enhancing the participation of a party's grass roots, which include women.

684. The restructuring of the Electoral Tribunal since the early 1990s has involved ongoing changes that strengthened that body's role as the main champion of citizens' representation in elections and helped it to win the population's trust as a guarantor of general elections and referendums, ensuring compliance with constitutional guarantees and encouraging all social groups and both genders to exercise their right to vote in order to reinforce their identity and representation under conditions of equality.

685. Panama has participated in the major international conferences on human rights and related issues and has signed the following international instruments, which contain national commitments and have the force of law:

(a) Universal Declaration of Human rights;

(b) Declaration on the Rights of Mentally Retarded Persons;

(c) Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons

(d) Declaration on the Rights of Disabled Persons;

(e) International Year for Disabled Persons;

(f) Economic and Social Council resolution 1979/14 on the prevention of disability;

(g) Second World Conference on Women, which adopted a resolution on measures in favour of disabled women regardless of their age;

(h) United Nations Decade of Disabled Persons;

(i) Economic and Social Council resolution 1984/26 on violations of human rights and of the rights of disabled persons;

(j) Convention on the Rights of the Child;

(k) Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111) of 1958, in force since 1960;

(l) Convention concerning Vocational Rehabilitation and Employment (ILO Convention No. 159 and recommendation No. 168) of 1983;

(m) American Declaration on the Rights and Duties of Man;

(n) Caracas Declaration on the restructuring of psychiatric care linked to primary health care

(o) Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care;

(p) PAHO/WHO resolution CD 40.R19 urging States to improve legislation protecting mentally disabled persons;

(q) Inter-American convention on the Elimination of all Forms of Discrimination against Persons with Disability;

(r) World Declaration on Education for All;

(s) Salamanca Declaration on Special Educational Needs;

(t) Montreal Declaration on Intellectual Disabilities;

(u) Cartagena de Indias Declaration one Comprehensive Policies for Persons with Disabilities in Latin America;

(v) Managua Declaration (1993);

(w) Antigua Commitment (1995);

(x) Atlapa Commitment (1995);

(y) Mexico Commitment (1995);

(z) Convention on the Rights of Persons with Disabilities.

686. The quality of all men and women without any discrimination and therefore the obligation of State authorities to protect the life, honour and assets of the resident and transient population in an egalitarian manner are enshrined in several articles of Panama's Constitution.

687. Article 26 of ICCPR has been implemented, often quasi-implicitly, under various laws proscribing discrimination on any of the grounds stipulated in the Covenant. Accordingly, Panama has no institutionalized discriminatory system. However, in order to ensure egalitarian development, the Government found it necessary to resort to so-called positive discrimination, formulating equal opportunities policies and provisions in favour of the members of excluded social groups, such as the indigenous people, persons with disabilities and women. Progress has thus been achieved in terms of occupational and comprehensive development but more remains to be done.

688. Although there is no specific policy in this area, yet, in the framework of the country's democratic policies with regard to particular social sectors, various provisions and programmes have been formulated with a view to promoting equality. For instance, although very have not yet produced the expected results, provisions designed to promote women's political participation have nevertheless boosted indirectly women's right to be elected.

689. Act No. 16 of 2002 exemplifies a law that, in the spirit of the Covenant, complemented the right of assembly by extending related provisions to such public places as nightclubs, parks and restaurants, in keeping with the Constitution and with the International Convention on the Elimination of All Forms of Racial Discrimination.

690. Act No. 11 of 22 April 2005 was adopted with a view to punishing labour-related discrimination.

691. Social policies are implemented with a view to ensuring equal opportunities for women, children, adolescents, the disabled and the elderly on a comprehensive basis, for instance with respect to the right to life (through health services), education (through bilingual educational programmes in the indigenous regions), employment and human development, which are part of civil and political rights.

692. The above measures are effective and considerable progress has been made. For instance, school enrolment and the birth rate have been raised. Significant activities are carried out by action groups, although the outcomes have not materialized as fast as expected.

693. The right to equality without any discrimination is not monitored by any particular institution. Individual bodies implement and monitor the policies that they consider appropriate. For instance, the City of Panama runs a municipal equal opportunities unit. Various bodies operate gender units. Committees have been set up for better coordination in addressing

the problems and needs of some population groups. The Committee for indigenous affairs (which is part of the central Government and comprises representatives of each indigenous ethnic group) and the National committee against discrimination are such examples.

694. The Committee for indigenous affairs has not met for months, while the National Committee against discrimination operates through the efforts of its individual members and has no resources of its own.

695. As indicated earlier, there are no flagrantly discriminatory practices in Panama. However, racial prejudices do exist against the indigenous people, citizens of African origin and persons from the inland regions. There also prejudices on other grounds, such as gender, age and religion.

696. Such types of behaviour have become internalized in the population and it takes an analysis (of words and gestures, for instance) for the people to realize their offensive character. This assertion is borne out by cases where employers prefer to hire personnel of a particular age and with certain physical characteristics, such as clear complexion, and by other similar experiences.

*Statistics regarding complaints for discrimination received by the Ombudsman's Office in 2006*

| Access to public places | On grounds of ideology | On grounds of religion | On work-related grounds |
|---|---|---|---|
| 4 | 1 | 1 | 2 |

697. A person prevented from access to public place on no legal grounds may notify the special magistrate's office (*corregiduría*) so that administrative proceedings may be initiated.

698. If it is a civil servant that prevents access as described above, criminal charges for abuse of authority may be brought or the matter may be referred to the Ombudsman's Office.

699. In either case, a civil claim may be filed for damages in view of the prejudice caused by the discriminatory act.

700. The right in question has been addressed only in a general manner, as part of human rights. No particular promotion activity has been undertaken in that regard. Such measures are necessary for promoting equality, tolerance and respect for all men and women.

701. Equality, freedom and dignity are key components of the rule of law. A thorough analysis, however, indicates that in Latin America those principles are not always implemented in the sectors requiring priority attention in the various regions. Those sectors are, inter alia, women, children, the disabled and the elderly.

702. On the contrary, the above important social sectors usually sink into oblivion, abandoned by the policies of the various States. That is the consequence of a number of factors, including in particular the phenomenon of discrimination, which for many decades has prevented a genuine social integration of the groups in question.

703. Discrimination takes two basic forms:

(a) Treating differently people who are equal;

(b) Treating equally people who are different, such as in the case of persons in need of curricular adapting because of some disability.

704. With regard to the disabled, discrimination is amplified by attitudinal barriers raised by their social environment. Consequently, Governments have passed countless laws to eliminate such hindrances.

705. According to the 2000 population census, there were in Panama 52,197 persons with disability. However, surveys conducted by such international organizations as PAHO/WHO, indicate that the actual proportion of disabled persons is considerably higher than the official rates and estimate that 10 per cent of the world's population suffer from some form of disability. Applied to Panama, that rate implies an approximate total of 280,000 persons.

706. That divergence is due to various factors, such as the inability of pollsters to determine whether a given family includes a member with disability, cultural and social stereotypes that make the collection of such information difficult and failure of the census to cover all regions of the country.

**Current legislation regarding persons with disabilities**

707. The Government has promulgated various laws and decisions aimed at protecting the rights of the disabled. The most significant of those texts is act No. 42 of 27 August 1999 on equal opportunities for the population group in question. That act addresses a broad range of issues in the context of individual and collective rights and obligations. For instance, article 54 of the act stipulates that any individual or legal entity that discriminates against a person because of that person's disability or who limits such a person's access to, inter alia, health services, education, employment, information, communication, transport or recreation shall be punished in accordance with the prejudice caused, notwithstanding civil and criminal sanctions.

708. Act No. 42 was regulated two years after its issue through decree No. 88 of 12 November 2002.

709. Although comprehensive, the above act is inadequately implemented. Suffice it to say that the first measures to be implemented under that act were taken only in 2004, thanks to the resolve of the Government.

710. In Panama, responsibility for training persons with disabilities rests basically with two bodies, the Ministry of Education and - since 1952 and almost exclusively in the area of special education - the Panamanian Institute for special training (IPHE).

711. Considerable efforts are currently made for implementing the "Inclusive Education" project, launched in the 1970s with a view to ensuring the entry of disabled boys and girls into the regular education system on an equal footing.

712. In practice, inclusive education has not produced the expected results because, despite the good will of the bodies in charge, the technical support necessary for enabling the pupils concerned to take advantage of the possibility to attend regular classes has not been made available.

713. In particular, the schools expected to accept children with movement-related disabilities lack such basic facilities as ramps and appropriately designed restrooms; pupils with defective hearing would not easily exercise their right to information and communication; and, generally speaking, natural educational establishments are not staffed in a manner allowing for a truly inclusive education.

714. As a rule, schools providing special education programmes are located only in the country's major towns. Rural areas lack such programmes.

715. For children with disabilities to receive a good education, the State must provide them with the tools necessary for access to information, including being able to communicate in their own language

716. It is saddening that, despite ongoing technological progress, persons with - mainly visual and auditory - disabilities are not offered the technical support required for their personal and professional development. To receive an education, most of those persons must rely on their own resources for gaining access to the means of communication. There are practically no educational establishments providing students with the possibility to read in Braille. Analogous difficulties are encountered by students with auditive or movement-related disabilities.

717. In sum, no method or strategy is yet available for offering persons with disabilities direct access to communication and information networks.

718. Although MINSA provides financing for the treatment of persons with disability, the funds available are insufficient and limited. Most of the establishments offering physiotherapy and rehabilitation services are located in the capital (although there are plans for redressing that situation with the establishment of rehabilitation centres in the country's interior).

719. As currently structured, Panama's health services do not comprise community-based rehabilitation, an approach implying that, once functional limitations are medically overcome, the social integration of the persons concerned depends as a whole on the active participation of all the social actors.

720. Technical support, which, as indicated, is not available within the education system, also fails to materialize within the health system. In most cases, such support is subsidized by bodies unrelated to the health sector, such as civic activities clubs, the National beneficence lottery, the Office of the First Lady, the National Secretariat for social integration of persons with disabilities (SENADIS) and the National Directorate for people with disabilities in the Ministry of Social Development (MIDES).

721. The most noble form of civic involvement is participation in elections. Through such participation, persons with disabilities may contribute to the election of the country's leaders, who ultimately have an obligation to formulate public policies beneficial to all men and women.

722. Act No. 42 of 27 August 1999 provides for the exercise of the disabled persons' right to vote, specifying that it is incumbent upon the Electoral Tribunal to ensure the adoption of specific provisions enabling those persons to exercise that right.

723. The political involvement of the disabled is utopian in view of the current absence of such physical surroundings as might enable them not only to exercise the right to vote, but also to be politically mobilized, unfettered by architectural or city-planning barriers, which in turn are the logical consequence of the almost nonexistent participation of persons with movement-related, mental or sensory disabilities in public affairs.

**Current Government policies for persons with disabilities**

724. Starting with the adoption of act No. 42 of 27 August 1999, a national plan for persons with disabilities began to be formulated with the active participation of all relevant Government bodies and the organizations composed by, or working for, disabled persons, with a view to implementing the plan in the period 2004-2010.

725. That plan basically focused on areas of activity related to prevention and attention measures in favour of the disabled (the sectors of health and education, including training). When the plan was formally launched, it became clear that the implementation of its policies required more resources than had been envisaged.

726. After the installation, in 2004, of the Government of the current President of the Republic, Mr. Martín Torrijos Espino, executive decree No. 103 of 1 September 2004 established SENADIS as a technical body advising the Government. Concurrently, the National consultative council for the social integration of persons with disability (CONADIS) was set up to develop strategies for the effective integration of the disabled into their social environment.

727. At that point, it became necessary to fill any gaps contained in the aforementioned national plan. That process led to the formulation of the National strategic plan for the social integration of persons with disability, 2005-2009, which is the current basis for Government policies for the disabled.

728. The plan in question comprises the following four strategic lines of action: Awareness and sensitization, adjustment and implementation of legal provisions, equal opportunities and promotion of research.

729. To be successful, the plan must be implemented by every Government body in its respective area of responsibility, and by civil society, which can largely contribute to overcoming attitudinal barriers.

730. To this date, the implementation of the above plan has mainly progressed with regard to the awareness-raising line of action, since activities in that area require relatively fewer financial resources

731. The equal opportunities line of action, which is aimed at introducing of appropriate standards in every social service system (such as transport, communication, information and health), is still in a preparatory phase because, as already mentioned, its implementation requires considerable budget allocations not yet available to the Government bodies.

732. In view of the specific significance of the equal opportunities component of the strategic plan, CONADIS is currently taking steps for drawing up, in particular, an accessibility plan. In fact, experience has shown that achieving universal accessibility is the key to enabling persons with disabilities to fully exercise their rights.

733. A National Committee for the preparation of an "accessibility plan, 2017" was formally established on 29 November 2006.

**Article 27**

734. In 1994, Panama introduced a family and minors code provision allowing the Kuna to celebrate and dissolve marriages in accordance with their traditions. That provision may also be applied to any other indigenous group. In the autonomous territory (*comarca*) of Kuna Yala, Sahilas have married hundreds of people. In that connection, further information must be provided to the indigenous population because often the new couples do not, after the traditional ceremony, file the documents required for legalizing the marriage.

735. Under act No. 34 of 6 July 1995 issued by the Ministry of Education, the education provided to indigenous communities is based on their right to preserve, develop and respect their identity and cultural heritage; and, in view of the country's general objectives, employ bilingual and intercultural methods. That act also provides for the Technical unit for education and special programmes in the indigenous regions, which was set up through decree No. 94 of 25 May1998. Supported by the World Bank and the Inter-American Development Bank, that unit has published bilingual books and trained educators in intercultural bilingual education. Massive literacy campaigns were carried out in those regions in the 1990s. A National plan for bilingual intercultural education was launched in August 2005. In 2006, two technical teams of the above the unit were incorporated into a bilingual intercultural project financed by the Spanish Agency for International Cooperation (AECI) for the Kuna General Congress. That project is a joint special-education initiative undertaken by civil society and the Government.

736. In view of the importance of the physical environment to the culture of the indigenous peoples, act No. 41 of 1 July 1998, known as the general environmental act, recognizes their right to the use, management and traditional and sustainable exploitation of the renewable natural resources located within their regions and reserves. The act also provides that any studies undertaken for the exploration and exploitation of natural resources in those areas shall not cause any damage to the cultural, social and economic integrity and spiritual values of the indigenous peoples. Accordingly, the State respects and guarantees the areas that they use, for instance, as cemeteries, sacred sites and religious places and which form part of their spiritual heritage. Nevertheless, in some areas, such as Santa Isabel, Colón and Ngobe Bugles in Bocas del Toro, there are still unsolved problems related to land used by the indigenous people for cultural and social purposes.

737. Under decree No. 4376 of 25 August 1999, the Government established the Department of traditional medicine, answering to the Directorate of social promotion, with a view to incorporating that department into the national health system. In recent years, training has been provided to indigenous midwives, as a complement to their traditional skills. Effectiveness in that area would be increased through cooperation with the traditional indigenous authorities.

738. The art of the indigenous peoples has its own spiritual value and is an integral part of their identity. Thanks to globalization, that art is currently traded, on a small scale, generating income that allows hundreds of indigenous persons to study, reaching the university level. In that context, the Government adopted act No. 20 of 26 June 2000, establishing special intellectual property rules regarding the collective rights of the indigenous peoples to the protection and defence of their cultural identity and traditional knowledge. Under that act, molas produced by the Kunas and other works of art of Panamanian indigenous peoples have been registered in the intellectual property list and 3,000 trademarks have been issued. Although such measures, designed to protect traditional knowledge, strengthen the identity of the groups concerned, yet various commercial products, such as food and school items, sold in the country's supermarkets, are modelled after molas.

739. Under act No. 77 of 2005, boys and girls are entitled to have a name in the language of their parents. Earlier, that was impossible and names were assigned by civil servants as a matter of routine.

740. In keeping with article 27 of ICCPR, Panama has established by law the autonomous regions (*comarcas*) of Emberá de Darién, Kuna de Madungandi, Ngöbe-Buglé and Kuna de Wargandi. Other indigenous groups have not delimited their lands as *comarcas* because they are located in reserves or national parks.

741. To that extent, the rights of indigenous peoples are exercised, since their territories are legally recognized and they have collective property rights over that land. However, significant State policies guaranteeing other rights of the indigenous peoples are not adequately implemented.

742. Thus, according to the annual report of the Ombudsman's Office for the period 1 April 2001 to 31 March 2002, "the violation of the human rights of indigenous peoples becomes an ever more complex issue because of the volatile character of measures taken by the authorities in the autonomous indigenous territories".

743. The legal vulnerability of the groups concerned is closely linked to weaknesses in the relevant national policies and laws.

744. Indigenous communities are characterized by a desire to preserve their cultural features and traditions as a bond crucial to their social cohesion.

745. Failure to fully recognize the basic principles that should govern the existence and sustainability of the indigenous peoples and changes to the rules establishing their fundamental rights affect their traditional cultural life and are the source of systematic violations against their human rights.

746. The indigenous peoples demand greater respect. They fight for decentralization in order to be able to promote their own development with enhanced participation and ownership and with a view to actively seeking to reduce their vulnerability and to strengthen governance through their traditional authorities in an organized manner.

747. According to the same report, "the indigenous peasant population is largely dependent on its natural surroundings. Therefore, mega-project construction and development in those

territories have a direct impact on their communities and, in a long-term perspective, on all of the planet's inhabitants. There is therefore a need for the adoption of effective international instruments for the protection of biodiversity and natural resources.

748. Yet contracts for the exploitation of, inter alia, mineral, lumber and water resources continue to be awarded for various areas of the country, particularly in the indigenous territories, and constitute a serious threat to ecological balance and to the environment in which the indigenous people live."

749. The resources made available by the State are not sufficient for meeting the basic needs of the ethnic groups in question. For instance, the health infrastructure in the areas concerned lack the equipment and supplies necessary for comprehensive care and for the exercise of the right to health, taking into consideration the local traditions and customs or the remote location of the areas. Moreover, the Government fails to exercise continuous control in order to prevent persons not belonging to those groups from invading the indigenous territories established by law. Furthermore, there is no strict compliance with the requirement for consultations in view of the exploration or exploitation of the natural resources of those territories.

**Notes**

(1) Plenary session of the Supreme Court, Judgement of 1 March 1996, on a request for unconstitutionality.

(2) Plenary session of the Supreme Court, Judgement of 8 November 1990, on the action for protection of a right enshrined in the Constitution, filed by Alex Askaandar Ashouri against the Seventh public prosecutor of the First judicial circuit of Panama.

(3) Hoyos, Arturo, *La interpretación constitucional* ("Constitutional interpretation"), Temis S.A., Bogotá, 1998, p. 105.

(4) Concluding comments of the Committee on the Elimination of Discrimination against Women on the second and third periodic reports of Panama (*General Assembly Official Records, Fifty-third session, Supplement No. 38* [A/53/38/Rev.1], chapter IV, paragraphs 175 to 205).

(5) Ministry of Health (MINSA), Multi-sectoral strategic plan.

(6) MINSA, National programme against STIs/HIV/AIDS, Department of Epidemiology, HIV/AIDS epidemiological monitoring, "Modelling the short-term expected distribution of the prevalence of HIV infections by exposure group", November 2005.

(7) Joint United Nations Programme on HIV/AIDS (UNAIDS) statistics for 2004, in: *Children and HIV/AIDS, Panama*, UNICEF, 204.

(8) MINSA, General Directorate for Health. Department of Epidemiology, *AIDS epidemiological monitoring* (September 1984 – September 2006), Executive summary, drawn up by Maria de Greco, 2 October 2006.

(9) Martínez, Hilda, *Progress report on the country's response to the HIV/AIDS epidemic*, Panam, January 2003 – December 2005. National programme against STIs/HIV/AIDS / UNAIDS, December 2005, p. 2.

(10) MINSA, National programme against STIs/HIV/AIDS, Department of Epidemiology, HIV/AIDS epidemiological monitoring, "Modeling the short-term expected distribution of the prevalence of HIV infections by exposure group", November 2005.

(11) *Ibid.*

(12) *Op. Cit.* (note 9 *supra*), *p. 2.*

(13) *Ibid*., p. 3

(14) Martínez, Hilda, *Analysis of the HIV/AIDS situation in Panama, 1996-2002*. MINSA / UNDP National programme against STIs/HIV/AIDS.

(15) *Ibid.*

(16) *Op. Cit.* (note 9 *supra*), pp. 6 and 7.

(17) Annual Report of the Inter-American Commission on Human Rights, 1990-1991 – Panama.

(18) Cf. discussion of article 9 in this report (paragraphs 103 *et seq.*).

(19) *La Prensa*, 10 December 2004.

(20) Judicial registry of the Supreme Court, plenary judgement, 7 February 2003.

(21) Cf. discussion of article 9 in this report (paragraphs 103 *et seq.*)).

(22) Act No. 31 of 28 May 1998, Official Journal No. 23553 of 29 May 1998.

(23) National Assembly records, ordinary session of 21 May 1998, statement by Mr. Roberto Abrego, deputy.

(24) Act No. 23 of 1 June 2001, Official Journal No. 24316 of 5 June 2001.

(25) "The injustice of justice: towards the end of impunity", speech delivered by the Attorney General of the Nation at an event organized by Fundación para la Libertad Ciudadana, 15 September 2005.

(26) Resolution No. 53 of 14 July 2005 "adopting certain Guidelines on the Role of Prosecutors, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", Official Journal No. 25353, Friday, 29 July 2005.

(27) Secretariat of the Office of the Attorney General of the Nation, Memorandum PGN-SG-129-06, addressed to "officials in charge of investigations", on "safeguarding the right to defence", dated 22 June 2006.

(28) Office of the Attorney General of the Nation, Circular PGN-SAL-009-05, dated 24 March 2005.

(29) Adopted in Official Journal No. 17210 of 24 October 1972 and amended in the constitucional reform act of 1978, the constitucional act of 1983, the legislative act of 1993 and 1994 and the legislative act of 2004.

(30) Act of 18 August of 1986.

(31) Judicial registry of the Supreme Court, plenary judgement, 25 January 1995.

(32) Judicial registry of the Supreme Court, plenary judgement, 6 August 1996.

(33) González, Rogoberto. *Curso de derecho procesal constitucional* ("A course in constitucional procedural law"), Panama, 2002, p. 202.

(34) Judicial registry of the Supreme Court, plenary judgement, 7 February de 2003.

(35) Judicial registry of the Supreme Court, plenary judgement, 4 September 2003.

(36) *Ibid*.

(37) *Ibid*.

(38) See referenced habeas corpus requests presented in the annex.

(39) ACPJ, *Auditoria Ciudadana de la Justicia en Panamá*, March 2004.

(40) Office of the Attorney General of the Nation, Circular PGN-SAL-009-05, dated 24 March 2005.

(41)

(42) Cf. discussion of article 9 in this report in respect of the electronic bracelet.

(43) Judicial registry of the Supreme Court, plenary judgement, 21 April 1994.

(44) Cf. www.alianzaprojusticia.org.pa.

(45) ACPJ, *Reforma judicial, una tarea inconclusa, perspectiva de la sociedad civil*, First edition, April 2001.

(46) ACPJ, *Auditoría ciudadana de la justicia en Panamá*, March 2004.

(47) According to the dictionary, *cesura* is “in modern poetry, a cut or pause in the verse in respect of any one of the metric accents regulating verse harmony”.

(48) Considering that the family and minors code should provide them with guidance, the media supported the reform of that code, carried out through act No. 4 of 1995.

(49) Osorio, Manuel, *Diccionario de ciencias jurídicas, políticas y sociales* (“Dictionary of legal, political and social science”), Heliasta, Buenos Aires, Argentina, 1989, p. 313.

(50) The following statistical table contains Registry Office birth data for the period 1985-2005.

(51) Electoral reform of 2002.

---