

"NOTHING EVER HAPPENS  
IN PANAMÁ"

Red  
Derechos  
Humanos - Panamá

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ALTERNATIVE REPORT ON HUMAN RIGHTS  
SITUATION IN PANAMÁ  
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## EXECUTIVE SUMMARY

The *Red de Derechos Humanos de Panamá* (Panama Human Rights Network, *RDH-Panamá*) is a network that provides a space for dialogue, coordination and reflection for Panamanian civic organizations that hold diverse visions of the national reality but share a commitment to advance the promotion, respect, and protection of human rights in Panama. We have organized since April 2007 and have coordinated through numerous organizations to prepare this Shadow Report as a contribution to the dialogue that will take place between the Human Rights Committee and the State of Panama.

Conscious of the principles of universality, indivisibility, interdependence, and progressive realization of human rights, we emphasize that all the topics discussed in this report are relevant. However, we highlight the following six topics.

### 1. DIVERSE FORMS OF DISCRIMINATION

**Articles 2, 3 and 26—non discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status:** Forms of discrimination in Panama include, among others: 1) discrimination against people with disabilities, 2) against people with HIV/AIDS, 3) against women, 4) based on national origin, specifically Colombian, 5) based on economic reasons against immigrants, 6) based on sexual identity, and 7) based on ethnicity and race (this last form exposes the relationship between racism, and social and economic exclusion). Despite these forms of discrimination, there is no law in Panama that criminalizes discrimination based on any of these reasons. The only relevant legislation is the Law 16 of 2002 that regulates right of admission to public places and establishes measures to prevent discrimination. This law is considered insufficient for the following reasons: in terms of complexity, cost, and delays; because it only concerns racial discrimination; and because the National Commission Against Discrimination does not incorporate representatives of groups that are vulnerable of being discriminated against based on reasons other than race (articles 8 and 9).

### 2. INSUFFICIENCY OF REMEDIES TO PROMOTE AND PROTECT HUMAN RIGHTS

**Article 2, Paragraph 3—Effective remedies for the violations of human rights:** Remedies designed to protect the violation of human rights are insufficient. This report emphasizes that the remedies designed to effectively protect human rights are inefficient. The Human Rights Ombudsman has neither significantly increased its formal and real autonomy nor of its human and financial resources required for effectively carrying out its functions. Injunctions to protect constitutional guarantees are extremely formalist and slow (e.g., a 2002 estimate indicated that the average procedure took more than 86 days to be resolved). The contentious administrative remedy for human rights violations is also inefficient and excessively formalist, to the point that attorneys and human rights groups do not even attempt to use it. Habeas corpus proceedings are also slow. In 2002, it was estimated that justice tribunals lasted about an average of 60 days to resolve habeas corpus writs. Finally, the corrective habeas corpus was introduced through an amendment in 2004 with the objective of being used “when there is a real or certain threat to physical liberty, or when the form or conditions of detention or the place where the person is found endangers his physical, mental or moral integrity or violates his right to a defense.” Despite this new constitutional provision, judges decide cases as if this text did not exist and there are long delays involved.

### 3. VIOLATION OF THE RIGHT TO CHOOSE ONE’S RESIDENCE DUE TO THE EXPANSION OF TOURISM AND HYDROELECTRIC PROJECTS AND MINES

**Articles 19 (right to freedom of opinion and expression) 22 (right to freedom of association) and 27 (rights of minorities)**

The State of Panama has encouraged construction projects for tourism and vacation homes in areas populated by indigenous people who are not protected by special legislation. These projects are forcing these indigenous people to leave their land without being ensured that they will find a home or land anywhere else. This situation is aggravated by the fact that there is no clarity in terms of demarcation of indigenous land and that the State of Panama has not ratified Convention (No. 169) of the International Labor Organization concerning Indigenous and Tribal Peoples in Independent Countries. Because there is no national legislation, these historically excluded communities are extremely vulnerable. Another problem is that the State has not recognized the rights to land for other traditional communities that are intimidated and persecuted by the Public Force, which works to protect the lands of private companies and violate the basic rights of citizens. Examples of such cases are the communities of Charco La Pava and Valle del Risco in Bocas del Toro as well as those affected by the project of Rio Cobre and Tabasará.

This situation creates problems of necessary access to water and production of food. It also violates the right to information about the projects, their effects, and how necessary they are for the country, the right to freedom of thought, the right to liberty of movement and freedom to choose residence, the right to freedom of association, and the violation of due process (detentions without legal justification for longer than legally permitted, biased authorities, denial of judicial assistance, violation of right to have a defense and of the presumption of innocence, absence of interpreters in necessary cases, unjustified delays).

#### 4. CONCERNING SITUATION OF THE PENITENTIARY SYSTEM

**Article 10—the right of all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person:** Although Panama's domestic law (Law 55 of 2003, on the reorganization of the penitentiary system) and international commitments require the protection of the human rights of those deprived of liberty, grave and systematic violations of human rights persist in Panama's detention facilities. Some aspects that should be emphasized are the high rate of incarceration (second only to Cuba in Latin America), lack of compliance with the Standard Minimum Rules, overcrowding, health problems and lack of medical attention (there is an insufficient number of doctors, nurses, and psychiatrists), psychological and physical abuse, inadequate personnel (police are in charge of internal security in a significant number of detention centers), poor infrastructure, lack of water, privileges and apparent corruption involved in these, lack of separation of accused from convicted, and lack of rehabilitation programs.

#### 5. LACK OF PROTECTION OF REFUGEES

**Articles 12 (the right to liberty of movement and to choose residence) and 13 (non refoulement):** The precariousness of the protection system for refugees is extremely concerning. The existent legislation, institutions, and resources are not sufficient to address this problem. Although a majority of the refugees come from our neighboring country Colombia, they also come from different countries from within or outside the continent. The discrimination and rejection that low income foreigners face is evident with the vision that Panamanians hold of refugees, particularly Colombians. The major issues regarding refugees are: a) lack of access to the proceedings of status determination, b) lack of complementary ways of protection, c) the precariousness of the temporal humanitarian protection, d) limitation of movement for beneficiaries of temporal protection, e) lack of mechanisms to integrate refugees locally, f) violation of the right to choose a residence. An example of the seriousness of the situation is the case of the forced deportations that took place in 1997 and 2003.

## 6. VIOLATIONS OF THE RIGHTS OF CHILDREN

**Article 23—rights of children:** Despite efforts carried out with respect to children's rights, serious violations persist. Some major problems are the high rate of malnutrition (approximately one in five) even in moments of high economic growth; the high rates of abuse and violence against minors; the continuing increase of penalties (in 1995, the maximum years for the most serious penalty was five years, in 2003 it was raised to seven, and in 2007 to ten). The State has also done little to educate society about children's rights. Additionally, there is an increase in the economically active population of 10-17 years that works in activities classified as the worst forms of child labor. There is a high number of abandoned children and they are provided low quality of institutionalization services. Finally, there are great limitations in terms of access to health and education, especially for poor children in rural and indigenous areas.

## INTRODUCTION

The *Red de Derechos Humanos de Panamá* (Panama Human Rights Network, *RDH-Panamá*) is a network that provides a space for dialogue, coordination and reflection for Panamanian civic organizations that hold diverse visions of the national reality but share a commitment to advance the promotion, respect, and protection of human rights in Panama. We have organized since April 2007 and have coordinated through numerous organizations to prepare this Shadow Report as a contribution to the dialogue that will take place between the Human Rights Committee and the State of Panama.

This report provides a first panoramic view of the bundle of civil and political rights in our country from the perspective of civil society. This vision is particularly important for four reasons:

- The report covers a broad period (1992-2008) that allows us to assess the impact of democracy in human rights.
- The State of Panama had not submitted a report to the Human Rights Committee since 1992.
- Although in the words of a peasant activist it would seem that “nothing happens in Panama” with regard to human rights violations, this report shows that this is not the case.
- Finally, Panama is undergoing great economic changes that are having an impact both in the economic and social spectrum, which to some extent opens new possibilities for development but also generates new groups that are excluded and new violations of human rights.

The report shows that the problem of human rights violations in Panama is a State issue in the sense that most situations do not respond to the policies of one particular government but of all of the administrations in Panama’s recent democracy. It could be said that it is improbable that if a government starts a violation, the next one in line would put a stop to it.

Since the democratic transition, the State has held the position that the majority of the rights that are violated in Panama (e.g. conditions of the people deprived of liberty) are because of a scarcity of resources. This argument is no longer relevant given Panama’s exceptional economic growth. In terms of human rights in Panama, when there are resources, there are no more excuses.

Perhaps the attitude that best embodies the immaturity of the State in terms of human rights is the fact that no government has wanted to recognize that Panama has problems regarding human rights.

We trust that in outlining the outstanding challenges that the State of Panama has in promoting and respecting of human rights, this report will contribute to Panama achieving the highest international and constitutional standards that it owes its people.

## **ALTERNATIVE REPORT ON THE HUMAN RIGHTS SITUATION IN PANAMA**

### **Article 2**

#### **Discrimination based on race, color, sex, gender, language, religion, political or other opinion, national or social origin, economic status, birth or other social status**

In Panama, there are currently no laws that criminalize discrimination by race, sex, social status or other personal status. The only related legislation is the law passed on April 16, 2002, which regulates the right of admission to public establishments and applies measures to prevent discrimination. Despite the fact that this law explicitly prohibits discrimination in the control of those entering and exiting commercial establishments, with fines ranging from \$250 to \$1000, discrimination against dark-skinned individuals and individuals perceived to be of low social status persists. These cases are difficult to verify, and legal procedures are costly for the victims. The groups often discriminated against do not occupy positions of economic or political power in proportion to their population. The existing law is insufficient due to its complexity, cost, and the amount of time necessary to exercise the rights contained within it. In addition, the law nearly exclusively addresses racial discrimination, due to the fact that the membership of the National Anti-Discrimination Commission does not include representatives from groups subject to discrimination on a basis other than race (Articles 8 and 9).

The State does not conduct public education about equality, tolerance and respect,<sup>1</sup> precisely the characteristics which are influential in the prevention of discriminatory behavior toward individuals and groups.

**A. Discrimination against individuals with disabilities:** Since 1946, the constitution of the Republic of Panama has included a provision which allows the State to deny the issuance of naturalization papers<sup>2</sup> to people with mental or physical disabilities.<sup>3</sup> This rule is currently in effect. The following is Article 12 of the Constitution of the Republic of Panama as it stood after the 2004 constitutional reforms:

Article 12: This law shall regulate naturalization. The State may deny a request for naturalization papers for reasons of morality, security, health, or physical or mental disability. (Emphasis added)

**B. Discrimination against people living with HIV/AIDS:** The HIV Law prohibits mandatory HIV testing by an employer of a job applicant or an employee, as such testing can lead to discrimination on the job or dismissals of HIV positive workers. The Act provides sanctions for non-compliance but does not provide mechanisms for ensuring compliance, and there have been numerous reports of violation of the Act. The State has different types of visas for entry into the country, including a visa for sex workers, which is granted if they present a certificate of a negative HIV/AIDS test. Women who work in bars, brothels and other clubs including hotels and guest houses, whether or not they are sex workers, are likely to be dismissed if they prove to be HIV positive, according to the Alcaldicos de Panamá, Chorrera, Los Santos Colón, and Bugaba decrees. These regulations also involve double discrimination, given that they refer almost exclusively to women.

- Resolution 1731 of the Ministry of Health orders border authorities to prevent the entry of women who have been contracted to work in the establishments mentioned above and who do not submit a negative HIV test upon entry into the country.

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<sup>1</sup> Official Report, Panama, CCPR/C/PAN/329, August 2007, p.210.

<sup>2</sup> Panamanian nationality is acquired, according to Art. 8 of the current Constitution, by birth, naturalization, or constitutional provision. Nationality by naturalization is subject to the provisions provided for in Article 12.

<sup>3</sup> This provision has been included despite the obligations under Article 2 of the International Covenant on Civil and Political Rights (hereinafter ICCPR or the Covenant) to give effect to the rights enshrined in the ICCPR through domestic law. The Covenant was incorporated into Panamanian law through Law No. 15 of October 28, 1976, published in the Official Gazette No. 18,373 of July 18, 1977.

- The Supreme Court declared lawful the arrest, for deportation purposes, of a foreign sex worker that had been diagnosed as HIV positive. The health center director who had attended to the woman had warned the Department of Migration of the issue, after which she was detained in order to process her extradition. The Director of Immigration stated that "a large percentage of Dominican citizens are causing the high rate of AIDS infection in the country."<sup>4</sup>

**C. Discrimination against women:** The official report of the Panamanian State, CCPR/C/PAN/329, fails to mention Article 2 of the ICCPR, which deals with the commitment of States to respect and ensure that all individuals enjoy the rights enshrined in the Covenant. Although the later provisions in the Covenant mention these rights specifically, it is particularly important to consider the text of Article 2, paragraph 2, which establishes the obligation of member states to issue the domestic laws necessary to give effect to the rights recognized in the ICCPR. With this in mind, it is crucial to signal the lack of effective anti-discrimination laws in Panama, which is apparent in the nature of the existing laws, the difficulties presented in the implementation of existing regulations, and the lack of resources devoted to implementation. One clear case of this is Law 4 of 1999, which established equal opportunities for women, and the corresponding regulation: Decree No. 53 of June 2002.

- Paragraph 12 of Article 11, Chapter V of the Law on Equal Opportunities for Women establishes the obligation to ensure that women have access to at least 50% of total jobs. Decree 53 of June 2002 designates the Ministry of Work and Labor Development to use its job pool to create mechanisms that promote the integration of women into the workforce. The State's report, however, notes the differences that persist between the work available to men and women, making it clear that the implementation of policies for the integration of women into the labor market has not yet achieved true access to employment. This runs contrary to Article 1 of the Labor Code which "governs relations between capital and labor on the basis of social justice" and Article 38 of the Code which clearly indicates the forms of "discrimination against women at work." This lack of compliance is corroborated by the figures provided in paragraphs 33, 34, and 35 of the official State report.

- The Law on Equal Opportunities was placed under the purview of the current Ministry of Social Development (MIDES), formerly known as MINJUNFA, as the governing body of the Public Policies of Equal Opportunities for Women (PIOM). Article 150 of Title II of the Final Provisions of Decree 52, which is the regulation corresponding to the Law on Equal Opportunities for Women, establishes the State's obligation to provide adequate human, technical and financial resources to all institutions, bodies and mechanisms created so as to ensure the effective implementation of the regulation. Institutions are required to assign a portion of their budget to implementation so that the regulations will be implemented at the earliest possible date. Despite the additional budgetary amounts allocated for the strengthening of individuals, women, children, and youth for the year 2003, however, the Ministry still holds one of the lowest governmental budgets, while the remaining State institutions include little to no budgetary items for resources allocated to compliance with the PIOM. After 2003, the policies disappeared from budget allocations.

Article 151 of the regulation provides that violations may be denounced before the MIDES. Despite the evidence provided by the State itself regarding its failure to implement the policies, there is no record of complaints - let alone sanctions - as the MIDES has not established a procedure for complaints and the regulation did not include any sanctions for cases in which such allegations are proven.<sup>5</sup>

**D. Ethnic or racially-motivated discrimination - relationship between racism, social exclusion and economic marginalization:** Discrimination based on skin color and ethnicity against Afro-descendants and indigenous people still persists in Panama and is a

<sup>4</sup> Expediente 376/04 of the Pleno de la Corte Suprema de Justicia, July 31, 1995

<sup>5</sup> Benson, Mónica. *La Prueba de Ortho como requisito para la contratación laboral* (Ortho test as requirement for work contract). Programa Plurianual Democracia y Derechos Humanos en Panamá, Unión Europea. Panamá, 2005.

serious violation of human rights. This situation manifests itself in subtle ways in the everyday life of people, becoming a cause of suffering, disadvantage, exclusion, and violence for many Panamanian men and women. Complaints have recently been filed regarding the exclusionary and discriminatory practices against girls of African descent who attend school wearing braids (*peinados de moñitos*). These discriminatory and arbitrary rules are applied in certain public and private high schools, and have been ignored by the authorities despite multiple complaints from the community.

Equality has been recognized as key to development and poverty eradication at the global level. Racial and ethnic differences are evident in indicators of poverty and social inequality in Panama. These factors coexist in almost all areas populated by predominantly indigenous communities (with a total population of 300,000) and Afro-descendants (who have a population of almost 1.5 million people). In particular, social exclusion (interpreted as a denial of essential public services to meet basic human needs on an ongoing, secure, and efficient basis) is higher in regions with a greater population of ethnic groups which have historically been subordinated in social and political processes (such as indigenous people and Afro-descendants in rural and urban areas). These groups have limited access and are less likely to be engaged in productive activities. These factors are interrelated and mutually reinforcing.

Together, these are the crucial factors affecting inequality and poverty. This exclusion manifests itself in subtle ways: in the lack of access to justice and social and political participation; the lack of access to a credit market; the lack of access to land and to adequate infrastructure (drinking water, sanitation, transportation, housing, public safety services); the lack of access to social services such as health and education and investments in human capital; and limited access to the labor market (employment and adequate wages).

The relationship of indigenous people to the State and the socio-economic system are in a process of change. On the one hand, the State and transnational corporate capital have an interest in the development of megaprojects (infrastructure such as hydropower), mining activities, and natural resource management, while on the other hand there is indigenous demand for access to basic health services, community infrastructure, and access to markets, generating the need for open lines of communication and transport.<sup>6</sup>

The discriminatory nature of poverty in Panama is demonstrated in the official figures: total poverty in rural indigenous areas hit 98.5% in 2003.<sup>7</sup> In contrast, total poverty in rural non-indigenous areas was 54.2%,<sup>8</sup> total poverty in the country was 37.2%,<sup>9</sup> and urban poverty was at 20.0%.<sup>10</sup>

The second Human Development Report states that nearly all of the inhabitants of rural indigenous regions are poor (98.4%) and 90% of the population is in extreme poverty.<sup>11</sup> This shows that the socio-economic situation of indigenous peoples has deteriorated, given that in 2002 95.4% of indigenous peoples were in poverty and 86.4% in extreme poverty. The search for better living conditions is one of the factors that has influenced indigenous migration towards the country's main cities, which could be contributing to the deepening of poverty and extreme poverty in the cities.

Health services are difficult to access for indigenous peoples due to geography, climate, economic, and cultural factors. The gravity of this situation is acute in the provinces of Bocas del Toro (58.7) and Darien (35.1). Indigenous regions have high child mortality rates for children

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<sup>6</sup> Eligio Alvarado *Perfil de los Pueblos Indígenas de Panamá* (Profile of Indigenous Populations in Panama). World Bank, RUTA and Ministerio de Gobierno y Justicia. Panama, 2001, pag. 26.

<sup>7</sup> Standard of Living surveys 1997 and 2003, Ministerio de Economía y Finanzas, Dirección de Políticas Sociales.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* Having increased from 15.3% in 1997.

<sup>11</sup> MEF. *Principales Resultados de la Encuesta de Niveles de Vida-2003* (Primary results of the Standard of Living survey – 2003). Revised edition. June 2005.

under 5 years old, with high rates in Ngöbe Buglé (55.4), Kuna Yala (38.0), Emberá (32.9) provinces. It is necessary to conduct preventive interventions in these regions.<sup>12</sup>

In particular, this situation affects the inequality in qualified professional care for childbirth between rural, urban and rural indigenous areas. There is a shortage of qualified health personnel to work in the indigenous areas. For indigenous people, there are 2.1 doctors per 10,000 people, while the national average is 8.9 per 10,000 people. In addition, these problems are aggravated by poverty, malnutrition, unequal access to education, population dispersal and, by extension, lack of food security, poor conditions associated with environmental health and quality of housing, as well as other determining factors which are disproportionately concentrated in the sectors of the population with the lowest human development and greatest exclusion from Panamanian society.

In terms of HIV/AIDS in indigenous regions, young people in particular are among the most affected on a national level due to their socio-economic conditions and frequent migration, among other factors.<sup>13</sup>

Indigenous groups also have a low level of education. According to the National Census of 2000, out of 244,841 indigenous youth older than four years old, 88,170 do not have the approved level of schooling in terms of attendance and level of instruction. The majority (50,083) of these youth are female. In general, indigenous peoples have less access to formal education, which is a product of economic conditions in the area.

The National Report on Human Development 2002 asserts that educational inequalities have to do with poverty, indigenous status, and gender. Nationally, the indigenous population continues to have the lowest literacy rates: in the District Ngöbe Buglé only about half are literate (54.1%), while in the Kuna Yala (61.5%) and the Embera (65.5%), close to two thirds of the population is educated. In these regions, the gap in literacy between men and women is notorious and could reflect up to a 20% disparity. In general, indigenous women have the lowest literacy rates, both among the extremely poor (50.8%) and among the entire poor population (51.2%).

Ethnic and racial discrimination in the labor market is mostly demonstrated in lower wages for Afro-descendent and indigenous populations, even when their skills and academic qualification are at similar levels or they are working in similar conditions to the white population. Generally, in order to earn a given salary qualifications for Afro-descendants and indigenous people are more stringent than for whites.

Another aspect of employment discrimination against people of African descent is their exclusion from jobs that require being visible to the public; their presence is regarded as a decrease in the quality of service provided. When a position is opened for Afro-descendants or individuals with a very dark complexion, in many cases the activities involved with the position are far from the public eye.

Ultimately, these gaps in access to social services and resources are not just indicators or unmet needs, but rather fundamental civil, economic, social, and cultural rights violations suffered by thousands of people who each day are denied or limited by the State's failure to comply with international treaties and agreements. The diffusion of this debate within different sectors will allow for more effective answers which can overcome development paradigms that so far have failed in addressing pressing social problems and historic inequalities.

**E. Discrimination by national origin – The situation of Colombian nationals:** As for discrimination by national origin, there is an entry restriction set by the National Directorate

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<sup>12</sup> This information is based on the document *Salud de Pueblos Indígenas: Un análisis de las condiciones de salud de las poblaciones de indígenas Panamá* (Indigenous Health: An Analysis of the Health Conditions of the Indigenous Populations of Panama). Ministerio de Salud. Dirección Nacional de Promoción de la Salud. Sección de Salud de Pueblos Indígenas, July, 2000.

<sup>13</sup> Op. Cit. Pag. 81.

of Immigration and Naturalization; this restriction is implemented through the visa authorization process for immigrant, tourist, and businessman visas issued to citizens of Asia and Africa as well as countries in the Americas, such as Cuba and the Dominican Republic. There is no legal basis for this in the Migration Act; Article 14 of the Constitution, however, establishes the possibility of demanding social, economic, and demographic restrictions.<sup>14</sup> Even when used in the interests of "national security," however, this is a discriminatory practice.

It has also increased xenophobia toward Colombians by the Panamanian authorities. In the early months of 2007, 324 people have been deported, of whom 266 are Colombians.<sup>15</sup> This situation has even been occurred for Colombian asylum seekers, according to opinions from international agencies such as CODHES (Consultancy for Human Rights and Displacement).<sup>16</sup>

**F. Discrimination against immigrants for economic reasons:** The National Directorate of Immigration establishes discriminatory criteria for migrants with little to no purchasing power purportedly because of public safety concerns, yet encourages large-scale investment and the granting of permission for indefinite stays to foreign retirees who are able to meet certain economic criteria.<sup>17</sup>

The State has created new visa categories that do not require significant formalities, such as those for the retired renter or agro-forestry small business investor.<sup>18</sup> These categories benefit foreigners with considerable economic wealth who invest it in our country. As a consequence of the wealth of these categories of people, the prices of homes and the height of residential buildings in Panama City has boomed.<sup>19</sup>

A foreigner who wishes to apply for a visa but lacks the economic resources cannot do so due to the list of requirements requested by the National Directorate of Immigration and Naturalization. Thus, if a visa applicant wishes to apply for a job in a company, he should plan to earn a minimum monthly wage of \$500, plus \$75 per dependent, including his spouse.

Immigration and residence cards have been granted to people who are engaged in drug trafficking and money laundering, as in the case of Lightning Montaña.<sup>20</sup>

**G. Discrimination for economic reasons:** In Panama, the gap between rich and poor has grown, and fewer and fewer people own the majority of the resources in our country.<sup>21</sup> In 2006 for the second consecutive year, according to the United Nations, Panama ranked among the countries with high human development, but had a persistently unequal distribution of wealth. According to the human development report written by the UNDP, of every \$100 that is produced in Panama, barely 70 cents (less than 1%) go to the 300,000 poorest people, while \$44 go to the 300,000 richest people.<sup>22</sup>

**H. Discrimination on the grounds of political opinion and ideas:** Article 36 section h of Decree Law no. 16 of 1960<sup>23</sup> allows authorities to deny entry, impede transit, or even deport foreigners who have anarchist ideas. In addition to constituting discrimination, this involves the violation of other rights such as equality before the law.

**I. Discrimination on grounds of sexual identity:** security agency rules contain provisions (Art. 132 and paragraphs 11-12 of Art. 133 of Executive Order no. 204, September 3,

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<sup>14</sup> <http://www.epasa.com/constitucion/consti2.html>

<sup>15</sup> <http://www.jesref.org/dispatch/index.php?lang=en&sid=1980#3>

<sup>16</sup> <http://biblioteca.prensa.com/contenido/2007/03/17/17-22a-nota1.html>

<sup>17</sup> [http://www.panamatramita.gob.pa/guiaGob\\_det.php?idInst=MIG](http://www.panamatramita.gob.pa/guiaGob_det.php?idInst=MIG)

<sup>18</sup> Webpage of the Dirección Nacional de Migración y Naturalización: [www.migracion.gob.pa](http://www.migracion.gob.pa)

<sup>19</sup> Informe de la Mesa Nacional de Migrantes y Refugiados de Panamá para la Red Regional de Organizaciones Regionales para las Migraciones dentro del marco de la Conferencia Regional de Migración (CRM), p. 4.

<sup>20</sup> Informe de Derechos Humanos 2006 (Human Rights Report 2006), Comisión de Justicia y Paz

<sup>21</sup> [http://www.panamaprofundo.org/boletin/opinion/democracia\\_dictadura\\_panama.htm](http://www.panamaprofundo.org/boletin/opinion/democracia_dictadura_panama.htm)

<sup>22</sup> <http://www.skyscrapercity.com/showthread.php?t=409583>

<sup>23</sup> Publicado en la Gaceta Oficial No. 14,167 de 5 de julio de 1960.

1997 which issued Regulation of the Discipline of the National Police<sup>24</sup>) which punish the practice of lesbian and homosexual acts by members of the National Police with loss of employment or liberty. This not only violates the right to non-discrimination, but also to the rights of equality before the law, intimacy, and work, among others.

Similarly, the Association of New Men and Women of Panama (AHMNP) submitted a draft preliminary bill to the National Assembly which would criminalize public expressions of discrimination on the basis of sexual orientation and gender identity. That document was amended and people expressed the need for a law that would criminalize all public discriminatory demonstrations according to Articles 1 and 20 of the Covenant. This document, however, never became law.

### **Paragraph 3: Effective remedies for the violation of human rights**

**A. Human Rights Ombudsman:** The office of the Ombudsman (Defensoría del Pueblo) was introduced into the Panamanian legal system through Law No. 7 of 1997. It was created as an independent institution that should serve as the critical conscience of the State, a pillar of democracy, and a defender of the human rights of those subject to the jurisdiction of the State. To achieve these ends, it was essential to elect figures that would possess proven independence from political, economic and other powers; knowledge and understanding of human rights and related topics; high moral character; and recognized prestige.

The institution has fulfilled only sufficiently its institutional role as a guarantor of the human rights enshrined in the Covenant, partly because of its insufficient autonomy, human and material resources, as well as commitment to the humanitarian agenda. To quote but one recent example in this regard, since October last the office has not replied to several complaints by the Asociación para la Conservación y el Desarrollo (ACD) regarding the harassment and arbitrary detentions by the Public Force of Ngobe indigenous people who inhabit near the Changuinola river, because of their oppositions to the construction on their lands of hydroelectric Chan-75 (see below articles 12 and 21)

**B. Injunctions (*Recurso de amparo*) to protect Constitutional Guarantees:** On average, requests for injunctions to protect constitutional guarantees took 86 days to be resolved in 2002. The injunction has been transformed into an overly formalistic remedy, which in practice has prevented access to the judicial protection of constitutional rights. Moreover, it is a remedy that can be granted only after having exhausted all other remedies. Given the gravity of violations of fundamental rights, we believe that injunctions to protect constitutional guarantees should be used even when other avenues are not exhausted in order to take advantage of specialized constitutional jurisdiction to protect citizens' rights.

With regard to access to justice, the constitutional reforms of 2004 raised the possibility of including in the Constitution a provision that would allow individuals whose human rights are affected by the acts or omissions of private companies providing public services to request the protection of their constitutional rights using the injunction remedy.

The existing text of Article 54 of the Constitution leaves out this possibility, however, which is a serious matter if the omission was due in part to the pressure exerted by private firms for this purpose. This would imply disproportionate and unreasonable discrimination, a violation of article 26 of the Convention, and a violation of the rules that guarantee access to justice with respect for due process and other legal guarantees.

One example of the delays which are imposed on those who use this remedy is the Ngobe Changuinola del Rio communities. These indigenous communities were increasingly being militarized due to their opposition to the construction of hydro Chan-75 on their land (see detailed information below under articles 12 and 21). The affected communities filed in the Supreme Court on December 21 for an injunction protecting their constitutional rights. This case has not yet been resolved by the highest court of justice in the country.

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<sup>24</sup> Publicado en la Gaceta Oficial No. 23,371 de 5 de septiembre de 1997.

**C. Administrative human rights proceedings:** This remedy is ineffective; it is also overly formalistic and does not find economic, social and cultural rights to be justiciable. This approach ignores the universality, equality, and interdependence of human rights. Due to its ineffectiveness, lawyers and human rights groups do not even raise the possibility of this remedy.

**D. Habeas Corpus and Corrective Habeas Corpus:** In 2002, it was estimated that the courts took an average of 60 days to resolve habeas corpus actions. Habeas corpus was introduced to the Panamanian legal framework as a judicial remedy, which was subsequently inserted into our Constitution in the 2004 constitutional reforms. After the reforms, Article 23 of the constitution stated:

Article 23: ... Habeas Corpus also may proceed when there is a real or certain threat to physical liberty, or when the form or conditions of detention or the place where the person is found endangers his physical, mental or moral integrity or violates his right to a defense.

Despite the new constitutional language, however, in practice the courts have diminished the effectiveness of the remedy, given that judges and magistrates often decide cases as if the text of the rule did not exist. Additionally, they do not use the remedy fully or decide such cases expeditiously.

Evidence of the above is apparent in the delay in adjudication (2 months minimum<sup>25</sup>), which runs contrary to the spirit of guaranteeing rights, which is the soul of the remedy. Quite apart from the use of the remedy in judgments, the situation of the country's prisons runs contrary to the principle of respect for minimum human rights and prisoner treatment standards, and in practice the interpretation of the remedy serves as a justification of the detention conditions.<sup>26</sup>

Another example demonstrating that the remedy of corrective habeas corpus is not adequate, effective, or expeditious is that of the case brought by CIDEM and the Justice and Peace Commission (*Comisión de Justicia y Paz*, CJyP) before the Supreme Court of Justice for the lack of water at the Joya-Joyita prison complex.

On November 17, 2007 these human rights organizations made a visit to the Joya-Joyita prison complex. During the visit, which occurred on a rainy day, the activists could verify how those deprived of their liberty squatted to drink water from puddles made by the rain. The water treatment plant that supplies the prison had completely collapsed from lack of maintenance, which can be attributed to the Ministry of Government and Justice and the General Directorate of the Penitentiary System.

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<sup>25</sup> This can be much more. See, for example, the sentence of February 1, 2007 which grants Corrective Habeas Corpus in favor of Roberto Arango against the National Director of the Institute for Interdisciplinary Studies of the Ministry of Social Development, Reporter: Harley James Mitchell, 1 February 2007. This judgement deals with the transfer of a juvenile to a center for adults and describes how the transfer is effected on September 30, 2006. The writ of habeas corpus is presented, and the Court acknowledges and transfers him to an authority who has two hours to respond. The ruling refers to the reply that was given on October 10, 2007. The case took 5 months to resolve and the remedy was unfavourable to the appellant. This would have been unreasonable delay in cases which merit the rapid remedy that the action is called to provide.

<sup>26</sup> See habeas corpus action for Abdul Edgardo Eisemann, Abel Mendez Escobar, Alan Cedeño, Alberto Loo Muñoz, Anastacio Alvarez, Angel Diaz Aguilar, Armando Mosquera, Armando Ward Asprilla, Carlos Pinock, Edgardo Augusto Rivera, Erick Ivan Vergara, Evaristo Cumbreña, Felix Gonzalez Zambrano, German Miller Torres Minota, Javier Antonio Baloy, John Glenn Calvo, Jorge Alberto Ellis, Jorge Luis Castillo, Jose Cleofe Dominguez, Juan de Leon Palacios, Luis Bedoya, Manuel Eustaquio Molina, Marcos Nisbeth, Mario Clarke, Marvin Salazar, Nestor Jesus Villalaz Cabezas, Nieves Torres Pineda, Ovidio Navarro, Rafael Corcho Montemayor, Reynaldo Alberto Palacios, Sergio Antonio Newland, Venancio Valencia Ortega y Vladimir Jaen Centella against the general director of the prison system under Art. 23 of the national constitution. There were two months to judgment in this case. Ponente: José A. Troyano. - Panamá, May 23, 2006.

On November 21, 2007 the two organizations presented a corrective habeas corpus action in favor of all those deprived of their liberty in the Joya-Joyita complex. Three weeks later, due to the delay in the Supreme Court's response, CIDEM filed an urgent request for precautionary measures before the Inter-American Commission on Human Rights.

On December 27, 2007 the Supreme Court decided that the recourse was "non viable" despite the language of Article 23 of the Constitution and stated that: "the corrective habeas corpus has as an objective to ensure that the person deprived of liberty remain within the circumscription or venue of the competent tribunal to judge him and thus to rectify the transfer to another penitentiary center that does not correspond according to the law."

This decision, at the margin of the law, is once again evidence of the State of Panama's position, which extends to all organs of the state, and which fails to adequately address its human rights obligations.

#### **ARTICLE 2 QUESTIONS:**

1. **Discrimination on the basis of race, colour, sex, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status.** Will the State of Panama amend Law 16 of 10 April 2002 so as to: (1) broaden the categories of discrimination that fall within the mandate of the National Committee Against Discrimination; (2) equally broaden the composition of the Committee so that it incorporates representatives and organizations from groups vulnerable to discrimination for reasons other than race (articles 8 and 9); and (3) make legal remedies more accessible, inexpensive, and prompt to victims?
2. **Discrimination against people with disabilities:** Will the State of Panama amend its Constitution so as to eliminate all discriminatory provisions that violate the principle of equality before the law, including article 12?
3. **Discrimination against people living with HIV/AIDS:** Does the State of Panama maintain valid regulations that are in conflict with the National Law of HIV/AIDS? Why does the State of Panama, in its prevailing legislation, establish norms that violate the right of people living with HIV/AIDS to work? Why does the Panamanian legal framework establish regulations in relations to HIV/AIDS that discriminate on the basis of gender?
4. **Discrimination against women:** Are monitoring mechanisms in place to track implementation of policies related to equality of opportunity? In case of state agency in compliance with claims regarding equality of opportunity for women, has the State of Panama established any procedure for receiving complaints, investigating, and sanctioning such in compliance?
5. **Racial discrimination and the relationship between racism, social exclusion, and economic marginalization:** Despite the fact that Panama's economic situation has improved over recent years, why has the social, economic, and cultural situation of the indigenous peoples worsened? Does the government maintain official statistics on the subject of the employment and economic status of indigenous peoples, and if so, what are they? What concrete measures has the State adopted to eliminate discriminatory conduct against afro-descendant and indigenous groups in the employment and economic sectors? Please provide concrete examples of measures that will be adopted to achieve such ends. How does the State design, execute, and monitor the effectiveness of public policy relating to employment, health, education, basic services, and economic assistance? How are these policies connected with each other to achieve the stated objectives of full and decent employment, social inclusion and well-being, redistribution of income and opportunity, in accordance with obtaining a dignified level of life without distinction as to ethnic origin or social or economic status, considering the strong and continuous economic growth, the inflationary process, the commercial speculation in products of basic necessity, and the problems of quality and coverage of fundamental public services? What is State policy and law with regard to possible manifestations of discrimination on the basis of ethnic origin, social and/or economic status in the social, labor/employment, political, economic, and cultural realms? In particular, with regard to groups of greater vulnerability such as women,

the elderly, children, and the disabled? How will the State of Panama aim to ensure that its sustained economic growth of recent years will focus its results in improving the conditions of social exclusion and economic marginalization?

6. **Discrimination on the basis of national origin – Colombian cases / Economic discrimination against immigrants:** Should Panamanian immigration authorities be required to provide a new analysis and interpretation of article 14, in order to regulate in a nondiscriminatory manner the entry of immigrants into the State? Please provide concrete examples of measures that could be taken towards this end.
  7. **Economically-motivated discrimination:** Contrary to what the State has presented, and as was documented by the UNDP Human Development Index, poverty rates in Panama have increased. Why? Does gross economic growth reach the population of Panama? Could the State please provide concrete examples of effective measures that will be taken to combat poverty and the unequal distribution of wealth?
  8. **Discrimination on the basis of political opinion:** Will the State repeal provision 36(h) of Decree 16 of 1960 and all other similar provisions?
  9. **Discrimination on the basis of sexual identity:** Will the State eliminate norms in the National Police that punish lesbian and homosexual conduct?
- ? ¿Piensa el Estado dotar de los recursos normativos, humanos y materiales a la Defensoría necesarios para su fortalecimiento y consolidación?

#### **QUESTIONS ARTICLE 2, PARAGRAPH 3:**

10. **Human Rights Ombudsman:** What measures will the state take to provide the adequate normative, human and material resources needed to strengthen and consolidate the HRO? What measures will the State take to guarantee that candidates for Ombudsman are independent and free from political, economic, or other types of influence? What measures will the State take to guarantee that future Ombudsmen are adequately committed to and trained in humanitarian issues? What actions will the Ombudsman take to contribute towards the prosecution in Panama of Raoul Cedras and Philippe Biamby for genocide and crimes against humanity? What actions will the Ombudsman take, in the face of the State of Panama's inaction, to ensure that the rights to truth, justice, and adequate reparation of the Invasion's victims are respected? Has the Ombudsman investigated, or does it plan to investigate, state action in response to Noriega's extradition? When does the Ombudsman plan to respond to the ACD complaint regarding the militarization of the River Changuinola Ngobe indigenous communities as a result of their opposition to the construction on their land of the Chan-75 hydroelectric dam.
11. **Injunctions of constitutional guarantee:** What concrete measures are being taken to ensure that injunctions will protect against actions or omissions that constitute human rights violations committed by privatized companies that provide public services? Are there plans to amend the Constitution to address these issues if necessary? What measures is the State taking to modify a judicial approach that favors formalism rather than effective judicial protection of human rights? Will the State allow claims of injunctions to be filed at any time, without requiring that all other legal remedies first be exhausted?
12. **Contentious administrative remedies for human rights violations:** Please provide statistics with regards to: (1) the number of contentious administrative remedies for human rights violations that have been filed since the remedy first became available; (2) the number of claims deemed admissible and inadmissible; (3) categories of rights protected; and (4) cases ruled in favor and against appellants on the merits. Please also provide this data disaggregated by year.
13. **Corrective habeas corpus remedy:** What measures will the State adopt to ensure that both corrective habeas corpus and general habeas corpus remedies are adequate, effective, and prompt? Why did the State not grant habeas corpus relief to prisoners for the lack of water in the prison system?

#### **RECOMMENDATIONS ARTICLE 2:**

Implement public policy and special legislation that regulate and sanction discriminatory conduct in all its forms. To that end, amend Law 16 of 10 April 2002 with three purposes: (1) to broaden the categories of discrimination that are within the mandate of the National Committee

Against Discrimination; (2) to equally broaden the composition of the Committee so that it incorporates representatives and organizations from groups vulnerable to discrimination for reasons other than race (articles 8 and 9); and (3) to make legal remedies more accessible, inexpensive, and prompt to victims.

1. **Discrimination against people with disabilities:**
  - a. Amend the provisions of Article 12 of the Constitution that are discriminatory in nature and violate the principle of equality before the law.
2. **Discrimination against people living with HIV/AIDS:**
  - a. Eliminate any regulations that conflict with the National Law of HIV/AIDS.
  - b. Repeal all norms that violate the right of people living with HIV/AIDS to work.
  - c. Establish regulations in relations to HIV/AIDS that address discrimination on the basis of gender.
3. **Discrimination against women:**
  - a. Put in place monitoring mechanisms to track policies related to equality of opportunity for men and women; implement a procedure for receiving complaints, investigating, and sanctioning in compliance with equality of opportunity provisions.
  - b. Create a pool of jobs on gender that would run a program with the cooperation of the Ministry of Employment and Labor Development and the Ministry of Social Development and Private Enterprise.
4. **Racial discrimination and the relationship between racism, social exclusion, and economic marginalization:**
  - a. Implement policies aimed at the socioeconomic and cultural development of indigenous peoples, to afford them opportunities equal to those enjoyed by the rest of the Panamanian population;
  - b. Channel economic growth towards eliminating conditions of social exclusion and economic marginalization.
5. **Discrimination on the basis of national origin – Colombian cases / Economic discrimination against immigrants:**
  - a. Create and establish non-discriminatory regulations that interpret article 14 of the National Constitution;
  - b. Create and promote public awareness campaigns that sensitize the public and promote solidarity with foreigners resident in Panama.
6. **Economically-motivated discrimination:**
  - a. Recognize and validate Third Report on Human Development;
  - b. Create and apply strategies to reduce – and not to conceal – poverty levels, to achieve an equitable economic growth and a better distribution of wealth. Include policy of evaluating these strategies for effectiveness.
7. **Discrimination on the basis of political opinion:**
  - a. Repeal provision 36(h) of Decree 16 of 1960 and all other similar provisions.
8. **Discrimination on the basis of sexual identity:**
  - a. Eliminate norms in the National Police that punish lesbian and homosexual conduct. Provide police academy with training in human rights and the respect of human dignity.

### **RECOMMENDATIONS ARTICLE 2, PARAGRAPH 3:**

9. **Human Rights Ombudsman**
  - a. Provide the normative, human and material resources necessary for the strengthening and consolidation of the institution.
  - b. Urge the Ombudsman to participate directly in claims of and investigations into genocide and crimes against humanity by producing reports aimed at national and international audiences.
  - c. Request that the Ombudsman comply with its constitutional mandate and account for the reach and effectiveness of its actions with regard to the reporting of human rights violations and its defense of the human rights of all Panamanians.

- d. Solicit from the Ombudsman a monitoring and evaluation report on the status of the ACD complaint on the militarization of the River Changuinola Ngobe indigenous communities.
10. **Injunctive relief:**
    - a. Adopt concrete measures to ensure that a claim of injunction effectively protects against conduct that violates human rights;
    - b. Require the Judicial Branch to report on activity related to human rights and to accountable to society at large.
  11. **Contentious administrative remedies for human rights violations:**
    - a. Train Supreme Court of Justice magistrates in international law, human rights law, and the hierarchy of international treaties and covenants in relation to Panamanian law.
  12. **Corrective Habeas Corpus Correctivo:**
    - a. Implement measures to ensure that habeas corpus is promptly and effectively granted so as to provide a legitimate guarantee of defense.

### **Article 3 Equality of men and women**

The passage of Law 4 of 1999 on Equality of Opportunity and its implementing regulations notwithstanding, the problems that gave rise to the law's passage persist. The State of Panama acknowledges as much in its Report, stating in paragraph 21 that such problems are, "fundamentally due to the fact that men and women are socialized differently based on prejudice and stereotypes of what is considered appropriate for the different genders".<sup>27</sup> Some of the social problems reflecting the inequality between men and women are clearly related to the State's failure to devote sufficient attention to these issues. Two such examples are domestic violence, a crime under Panama's current Penal Code, and violence against women, the incidence of which has clearly increased, particularly cases of violence that result in death. Additionally, despite an increase in women's access to the educational system, salaries in the marketplace remain inequitable. Research indicates that men earn higher salaries than women who have more years of schooling. The disparity in access to public office is even more marked. Furthermore, Panama has not ratified a series of Conventions and Recommendations in relation to the protection of women's access to the workplace, such as: Conventions 103 and 183 and Recommendation 183 on maternity protection for the working woman, and Convention 156 on equality of opportunity and treatment for male and female workers: workers with family responsibilities.

- In November 2006, the Alliance of Organized Women of Panama (Alianza de Mujeres Organizadas de Panamá) reported an increase in deaths related to domestic violence and violence against women. According to information provided by the Alliance, there were 24 fatalities in 2006<sup>28</sup> and 27 in the first ten months of 2007.<sup>29</sup>
- Discrimination against women in the workplace persists, as evidenced by the State of Panama's Official Report. According to the Report on Economics and Gender in Panama, published in 2006 by UNDP, UNIFEM, and the Faculty of Economics of the University of Panama (FAECO-UP), one of the most striking examples of inequality is the disparity in salaries between men and women who occupy the same position. A look at the twelve ministers of the Cabinet, appointed and removed by the President and only three of whom are women, provides clear evidence of women's difficulty in holding public office.

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<sup>27</sup> Informe oficial del Estado Panameño (Official Report of the State of Panama), CCPR/C/PAN/329 de agosto de 2007, p.7

<sup>28</sup> Alianza de Mujeres de Panamá. Cuadro de reporte de casos de muertes de mujeres. Femicidio- Panamá 2006. Documento informativo para la conmemoración del 25 de noviembre día de la no violencia contra la mujer (Report of female deaths. Femicide-Panama 2006. Informational document to commemorate No Violence against Women Day), Panamá, 2006.

<sup>29</sup> Alianza de Mujeres de Panamá - CEALP. Cuadro de reporte de casos de muertes de mujeres. Femicidio- Panamá 2006. Documento informativo para la conmemoración del 25 de noviembre día de la no violencia contra la mujer. Panamá, octubre 2007.

**QUESTIONS ARTICLE 3:**

Does the State of Panama run educational programs or campaigns aimed at eliminating gender-based prejudice and stereotypes that impose barriers to equality of opportunity? Are there programs that devote full attention to the fight against domestic violence and violence against women?

**RECOMMENDATIONS ARTICLE 3:**

- The State should urgently develop effective public education programs to eradicate the socialized differentiation that poses barriers to policies of equality of opportunity.
- Implement efficient statistical models that measure incidence of violence against women in all its forms.
- Develop and implement specific legislation to prevent, punish, and eradicate violence against women.
- Develop affirmative action policies that place women in the marketplace in a sustained manner. Keep those policies in place until attainment of the 50% goal set by the Regulation Decree of the Law of Equality of Opportunity.

### Article 6 Right to life

**A. The period from 1968-89:** From 1968 to 1989, Panama was ruled by a de facto military regime. During those 21 years, State agents attacked the civilian opposition through a variety of means including extrajudicial executions, forced disappearances, torture committed or authorized by military personnel, and mass arbitrary detention. Given the context in which the State committed these violations, they could constitute crimes against humanity and the State should therefore take the appropriate legal measures.

Upon the return to democracy, actions were taken to end an era of impunity. The Truth Commission, established in 2001, prepared a report that corroborated the statements made above. It also offered recommendations on how to handle reparations and honour the victims. Although the previous legal framework imposed a statute of limitations for those crimes, the change in Supreme Court composition prompted a change in this framework, as evidenced by the judgment issued on 16 December 2003 in response to an appeal presented by the Special Superior Prosecutor of judicial order 63 of 21 April 2003 (criminal claim related to the death of Mr. José del Carmen Tuñón barred by statute of limitation). Nevertheless, in the last two years, six out of seven cases that had been investigated by the Truth Commission have been declared barred by statutes of limitations. This, despite the fact that the judgments issued contravene the precedents set by the Nuremberg principles, the International Criminal Tribunals for the former Yugoslavia and Rwanda,<sup>30</sup> the European Court of Human Rights,<sup>31</sup> the United Nations Human Rights Committee,<sup>32</sup> the Inter-American Commission on<sup>33</sup> and Court of Human Rights,<sup>34</sup>

<sup>30</sup> See, e.g., *Decision of the International Criminal Tribunal for the Former Yugoslavia*, Prosecutor v. Anto Furundzija, Dec. 10, 1998, ¶¶ 141, 157. It is important to point out that the U.N. Security Council included torture as a crime against humanity in the statutes for the international tribunals for the former Yugoslavia, art. 5, and Rwanda, art. 3. The latter statute asserts: "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: . . . f) Torture."

<sup>31</sup> See, e.g., *Papon v. France*, App. No. 54210/00, Eur. Ct. H.R., Decision (Nov. 15, 2001), p. 21; *ECHR, Case Kolk and Kislyiy v. Estonia*, Judgment of January 17, 2006. Application Nos. 23052/04 and 24018/04.

<sup>32</sup> Ver a manera de ejemplo las Observaciones finales del Comité de Derechos Humanos: Argentina. (Human Rights Committee, Concluding Observations: Argentina). 03/11/2000.CCPR/CO/70/ARG. y El Salvador. 22/08/2003. CCPR/CO/78/SLV.

<sup>33</sup> See, e.g., Chapter V, Title II of the Annual Report of the Inter-American Commission of Human Rights 1986-1987, OEA/Ser.L/V/II.71,Doc. 9 rev. 1, Sept. 22, 1987; Chapter V, Title II of the Annual Report of the Inter-American Commission of Human Rights 1987-1988, OEA/Ser.L/V/II.74 ,Doc. 10 rev. 1, Sept. 16, 1988, Report No. 34/96, regarding cases 11.228, 11.229, 11.231 y 11.282, ¶ 47, Report No. 36/96, case 10.843, Oct. 15 1996, Chile, ¶ 47, Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.585, 11.595, 11.652, 11.657, 11.675 y 11.705, April 7, 1998, Chile, ¶ 39, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes,

and the precedents of regional domestic courts,<sup>35</sup> including Panama's own courts.<sup>36</sup> Most importantly, these latter rulings contradict Panama's international treaty obligations on human

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Andrés Hernández Carpio, José Catalina Meléndez y Carlos Antonio Romero, Jan. 27, 1999, against the Republic of El Salvador, ¶ 112, and Report No. 113/99, Case 11.725, Carmelo Soria Espinoza, Nov. 19, 1999, - 54.

<sup>34</sup> See, e.g., IDH Court. **Barrios Altos V. Perú**. Sentence of March 14, 2001. Series C No. 75, ¶ 41, IDH Court. **Tujillo Oroza V. Bolivia. Reparations**. Sentence of February, 27, 2002. Series C No. 92, ¶¶ 106-108, IDH Court. **El Caracazo V. Venezuela. Reparations**. Sentence of August 29, 2002. Series C No. 95, ¶¶ 118-120, IDH Court. **Bulacio V. Argentina**. Sentence of September 18, 2003. Series C No. 100, ¶¶ 116-118, IDH Court. **Myrna Mack Chang V. Guatemala**. Sentence of November 25, 2003. Series C No. 101, ¶¶ 276-277, IDH Court. **Molina Thiessen V. Guatemala. Reparations**. Sentence July 3, 2004. Series C No. 108, ¶¶ 81-84, IDH Court. **19 Merchants V. Colombia**. Sentence of July 5, 2004. Series C No. 109, ¶¶ 260-263, IDH Court. **Gómez Paquiyauri Brothers V. Perú**. Sentence of July 8, 2004. Series C No. 112, ¶¶ 150-152, IDH Court. **Tibi V. Ecuador**. Sentence of September 7, 2004. Series C No. 114, ¶¶ 256-259, IDH Court. **Plan de Sánchez Massacre V. Guatemala. Reparations**. Sentence of November 9, 2004. Series C No. 116, ¶¶ 96-99, IDH Court. **Carpio Nicolle and others V. Guatemala**. Sentence of November 22, 2004. Series C No. 117, ¶¶ 128-131, IDH Court. **Serrano Cruz sisters V. El Salvador**. Sentence of March 1, 2005. Series C No. 120, ¶ 172, IDH Court. **Huilca Tecse V. Perú**. Sentence of March 5, 2005. Series C No. 121, ¶¶ 107-108, IDH Court. **Gutiérrez Soler V. Colombia**. Sentence of September 12, 2005. Series C No. 132, ¶¶ 96-97, IDH Court. **Mapiripán Massacre V. Colombia**. Sentence of September 15, 2005. Series C No. 135, ¶ 304, IDH Court. **Gómez Palomino V. Perú**. Sentence of November 22, 2005. Series C No. 136, ¶¶ 139-140, IDH Court. **Blanco Romero and others V. Venezuela**. Sentence of November 29, 2005. Series C No. 138, ¶ 98, IDH Court. **Pueblo Bello Massacre V. Colombia**. Sentence of January 31, 2006. Series C No. 140, ¶¶ 266-269, IDH Court. **Baldeón García V. Perú**. Sentence of April 6, 2006. Series C No. 147, ¶¶ 199-201, IDH Court. **Ituango Massacres V. Colombia**. Sentence of July 1, 2006. Series C No. 148, ¶ 402, IDH Court. **Montero Aranguren and others (Retén de Catia) V. Venezuela**. Sentence of July 5, 2006. Series C No. 150, ¶¶ 138-141, IDH Court. **Almonacid and others V. Chile**. Sentence of September 26, 2006; Series C. No. 153, IDH Court, **Goiburú and others V. Paraguay**. Sentence of September 22, 2006, Series C No. 154, ¶¶ 111-114, Series C No. 162, ¶¶ 225 y 226, IDH Court. **Cantuta V. Perú**. Sentence of November 29, 2006, Series C No. 163, ¶ 294, IDH Court. **La Rochela Massacre V. Colombia**, Sentence of May 11, 2007.

<sup>28</sup> For examples of national tribunals that incorporate in its jurisprudence the imprescriptibility of crimes against humanity, see the de document by Amnesty International, Chile, **Fujimori Case: The Supreme Court of Justice must comply with obligations of international law**, AMR 22/006/2007, August 1, 2007.

<sup>29</sup> "In the case of Heliodoro Portugal, the Supreme Court of Justice of Panama concluded in 2004 that the forced disappearance of Heliodoro Portugal, which took place in 1970, was not subject to statutory limitations. The Supreme Court based its decision on both domestic and international law. It thus noted the provisions of the 1922 Criminal Code in force at that time; the fact that - at the time of Heliodoro Portugal's disappearance - a political regime was governing the country that prevented free access to justice; and Panama's position as state party to the Inter-American Convention on Forced Disappearance of Persons, which establishes the non-applicability of statutory limitations to this crime. In addition, the Supreme Court stated: "Hence the importance and the right of society to know what happened to the people who disappeared from around them, as a consequence of their political ideas. Thus in this regard, under no circumstances can criminal principles such as the principle of legality and non-retroactivity of criminal laws apply. . . ." "At the start of 2007, with the old Criminal Code that established a statutory limitation period for all crimes still in force, the Panamanian Supreme Court reaffirmed its conclusion in the case of Cruz Mojica Flores, in which the statutory limitation period for a murder committed in 1968 was considered. The Court concluded that the perpetrators of this crime knew at the time that the murder they were committing was just one more crime within the generalized wave of crimes being committed against political opponents in Panama and thus rejected the defense of a statutory limitation period put forward by the defense counsel. In so doing, it stated that the murder of Mr. Mojica Flores constituted a crime against humanity and thus "it was bound to declare the criminal action in this type of crime as not subject to statutory limitations." See *id.*

<sup>30</sup> Panamá ha suscrito los documentos internacionales, que le establecen la obligación de no prescribir crímenes de lesa humanidad, como la desaparición forzada de personas. Ver por ejemplo el artículo VII de la Convención Interamericana sobre Desaparición Forzada de Personas, la cual se incorporo a la legislación interna nacional a través de la Ley No. 32 de 28 de junio de 1995, publicada en la Gaceta oficial No. 22,817 de 3 de julio de 1995.

<sup>31</sup> Ver por ejemplo lo que establecen los artículos 17 y 29 (en concordancia con los artículos 5 y 7) del Estatuto de Roma, el cual es incorporado a la legislación interna de Panamá a través de la Ley 14 del 13 de marzo de 2002, publicada en la Gaceta Oficial No. 24,512 de 15 de marzo de 2002. También consultar el artículo I de la Convención sobre Imprescriptibilidad de los Crímenes de Guerra y de Lesa Humanidad, incorporada al derecho interno panameño, a través de la Ley No. 56 de 20 de diciembre de 2006, publicada en la Gaceta Oficial No. 25,699 de 27 de diciembre de 2006.

rights<sup>37</sup> and criminal law<sup>38</sup> and the statute of the International Criminal Court. This, despite the fact that all of these international forums and instruments recognize that statute of limitations are not applicable to cases of crimes against humanity. To allow such limitations would permit the impunity of those who have perpetrated grave crimes according to international law.

Late last year<sup>39</sup>, the Executive vetoed a law, passed unanimously by the Assembly, that purported to create a Truth and Reconciliation Commission. This new Commission would, *inter alia*, continue the work of the previous Truth Commission with respect to the crimes committed during the de facto government of 1968-1989 and during the United States' government invasion of Panama. Further details on this law are provided in the section devoted to the victims of the invasion of Panama.

The State also recently had the opportunity to ensure adequate compliance with the sentences imposed on General Manuel Antonio Noriega for human rights crimes committed on Panamanian soil. In 1991 Panama requested that the United States government extradite Noriega, who has been in United States custody since he was captured during the invasion. Surprisingly, the State has never renewed its request for extradition, which was made during the course of an investigation. Thirteen years later, in 2004, the French State requested Noriega's extradition from the United States for money laundering. Panama has allowed the State of France's request to take priority, paying no attention to the nature of the crimes at hand, to the fact that the Panamanian interest is superior to the French interest, and to the fact that its request was made much earlier. Recently, the State of Panama has never stated its position to the United States on the subject of Noriega, despite persistent questioning on the part of United States judges, thus obviating the victims' interests. Nonetheless, it is the United States that will decide Noriega's fate. He has not yet been sent to France and the Panamanian State may yet have sufficient time to state adequately its case.

Five years after the publication of its report, not one of the Truth Commission's recommendations have been followed, and there have been serious weaknesses in the truth, justice, and reparations made available to the victims.

**B. The invasion of Panama:** The military invasion of Panama was illegal and unilateral. This act of aggression by the United States was one that had terrible effects on the civilian population of Panama, the scope of which are still unknown today. The number of casualties is unclear and reports vary according to the source. Numbers range from the 500 casualties reported by the Southern Command, to the 4000 recognized by the Committee of those Who Fell in the Invasion, to 7000 recognized by some independent United States bodies, such as the former prosecutor Ramsey Clark.

No official statistics exist. Despite repeated requests to the State, the State has systematically refused to report these numbers. For example, in 1990, human rights organizations requested that the State take advantage of the census to determine the number of casualties. The post-Invasion government declined the proposal. In 30 July 1992, the Second Chamber of the Supreme Court of Justice dismissed a criminal complaint against then-president of the United States, George H. W. Bush, filed during his visit to Panama. More recently, in December 2005, the CIDEM requested the HRO to form a Truth Commission for the victims of the invasion. The Ombudsman has not responded.

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<sup>37</sup> Panama has subscribed to the international documents that establish the obligation not to prescribe crimes against humanity, like the forced disappearance of persons. See, for example, Article VII of the Inter-American Convention On Forced Disappearance of Persons, which was incorporated into national law through Law No. 32, June 28, 1995, published in the Official Gazette, No. 22,817, July 3, 1995.

<sup>38</sup> See, e.g., articles 17 and 29 of the Rome Statute, which has been incorporated into national law through Law 14 of March 13 2002, Publisher in Official Gazette No. 24,512 of March 15 2002. See also Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, incorporated into domestic law through Law No. 56 of December 20 of 2006, Publisher in the Official Gazette No. 25,699 of December 27 of 2006.

<sup>39</sup> See <http://www.defensoriadelpueblo.gob.pa/miscelaneo/CVerdad>

The Free Trade Agreement negotiations with the United States presented the Panamanian Government with a good opportunity to raise issues relevant to the bilateral agenda, such as the chemical weapons on San José Island, Shooting ranges, and the invasion of Panama. However, the State did nothing on the subject.

On December 2007 the National Assembly approved unanimously a norm “that declares December 20 of each year the Day of Patriotic Mourning and Reflection and other provisions.” It contemplated the creation of a Truth and Reconciliation Commission which would in part further the work begun by the Truth Commission. It was vetoed by the Executive. While the norm represented a step in the right direction it had several shortcomings.

One concern is that, on the one hand, State actors are over-represented among Commission Members, and, on the others, there is no presence of human rights NGOs or independent experts. The Commission’s mandate is also problematic, particularly the provision requiring a compilation of “comprehensive lists” of casualties. The compilation of a list is far from the *individualized truth* that the State must ensure to victims’ relatives and society at large. The law makes no mention of a duty to search for the victims’ bodies and to return them to the victims’ relatives. Additionally, those who died and their relatives are not the only victims. Those who suffered and still suffer harm to their physical and mental integrity from acts committed during 1968-89 and the invasion are also victims, as are those who were forcibly disappeared or deprived of liberty. None of these victims are made whole by the National Truth and Reconciliation Commission’s mandate.

With respect to the “objective account” that the Commission must produce, we ask whether any safeguards exist to prevent the Commission from falling prey to the temptation of historic revisionism. Neither the composition of the proposed Commission, nor the bill’s failure to mention the advances already achieved by the Truth Commission, present good signs.

Finally, no mention is made of the as-yet-unfulfilled reparations recommendations issued by the previous Truth Commission.

**C. Unexploded munitions in old artillery ranges, transferred by the United States to Panama without decontamination.** The United States used areas close to the Canal to train its military troops, conduct tactical drills and test experimental, chemical, conventional, and other types of weapons.

As a result, many types of munitions, explosives, and bombs were launched in areas known as the Artillery Ranges. The reversion to Panama of the canal and nearby areas, pursuant to the Torrijos-Carter Treaties, left to Panama the problem of decontaminating these areas, in which dangerous and unexploded weapons are still found. The United States has refused to decontaminate the area. The Government of Panama has made only timid efforts to this effect, despite journalist accounts that 21 people have died in these artillery ranges from 1979 to 1996 as a result of the explosion of these objects. Such an environment also endangers those who live in the adjoining areas.<sup>40</sup> The number of victims from this past decade is unknown, and no official number of victims exists.

The current administration has made no effort to raise this issue with the United States; it has, however, considered literally “burying the issue.” The State has put forth the possibility of using soil from the canal widening works to bury the artillery range areas, and to then pass the bill over to the United States in an eventual negotiation with that government. Should it do so, Panama will be turning its back on the State duty to resolve not only the contamination problem, but also to fight for the compensation of victims who have been killed or mutilated by these explosives.

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<sup>40</sup> Diomedes Sánchez “Buscaba plátanos y encontró la muerte” (“Searching for plantains and found death”), diario La Prensa 2 de julio de 2004.

**D. Undetonated chemical weapons in San José Island, which the United States transferred to Panama without decontamination:** San José Island, located on the Pacific coast, was the scene of United States military training during the Second World War and the setting for military bases. The United States military launched projectiles containing chemical weapons on the island. The United States, neither before nor after the reversion of the Canal, took responsibility for these chemical weapons. The State of Panama has since made feeble attempts toward this end, none of which can be attributed to the current administration.

In fact, the State of Panama's inaction is so serious that it may face a sanction by the Organization for the Prohibition of Chemical Weapons (OPCW), for failing to destroy the kind of weaponry left by the United States military on San José Island[1].

The current administration seemingly prefers to accept a sanction from an international body, despite the fact that Panama can and should demand to the United States that it recognize its responsibilities. San José Island is being developed with an eye towards its tourism potential. The presence of chemical weapons poses a clear risk to the life, personal integrity, and health of those who live in or visit the island.

**E. Passage through Panama Canal of freighters with radioactive cargo:** Freighters transporting radioactive substances periodically pass through the Panama Canal. Civil society organizations have publicized their concerns regarding the potential impact of a natural disaster or of a terrorist attack against these ships (even more feasible in a post-9/11 world and following Panama's support for the invasion of Iraq). Such a disaster would be particularly dangerous if it occurred on jurisdictional waters, or even worse, on the banks of the Canal, the basin of which is fed by rivers and affects the water table and is the main supplier of water for Panama City, the country's main city. Constitutional challenges in attempt to enjoin the passage of these freighters have been ineffective. Ships carrying this material have secretly slipped through the Canal, aided by complicit State authorities. These are efforts to avoid public protests against the passage of these ships. Previous protests have been broken up.

Given the potential risks posed to the life and integrity of the approximately 1.5 million people who live in Panama City and its neighbouring areas, we believe the Committee should order the State of Panama to prohibit the passage through the Panama Canal of freighters with radioactive cargo.

The passage through the Canal of United States nuclear submarines poses additional risk.

**F. Poisoning by Dietilenglicol:** Over a year ago, revelations surfaced that hundreds of Panamanians had been poisoned by the ingestion of medication containing dietilene glycol and obtained from the Social Security Fund (*Caja de Seguro Social, CSS*). The State has removed from office low- and mid-level CSS laboratory employees, but no high-ranking leaders the Ministry of Health, the CSS, or the Customs Department have been held accountable for their actions or omissions.<sup>41</sup> Meanwhile, no compensation or justice has been granted to the relatives of the 112 people who died by poisoning and whose deaths the government has officially recognized,<sup>42</sup> nor to the survivors of who will suffer the effects of the poisoning for the rest of their lives.

**G. Deaths due to construction accidents:** According to statistics of the Sole Construction Union ["Sindicato Único de la Construcción (SUNTRACS)"], the number of fatal construction worker accidents has continued to rise since 1998 due to lax compliance with safety standards. Particular increases have been documented in labor accidents and in construction industry deaths, including 13 fatalities in the first half of the year 2007.<sup>43</sup>

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<sup>41</sup> Diario La Prensa 2 de octubre de 2007, <http://biblioteca.prensa.com/contenido/2007/10/02/2-sira2-rostros.html>

<sup>42</sup> Diario La Prensa 17 de octubre de 2007, <http://biblioteca.prensa.com/contenido/2007/10/17/17-4a-nota6.html>

<sup>43</sup> Voice of SUNTRACS No. 6, June 2007, informational arm of the Sole National Union of Construction Workers.)

#### **H. Deaths of 18 individuals in a State-certified public transportation bus:**

October 23, 2007 marked the one-year anniversary of the most tragic motor vehicle accident that Panama has experienced over recent years. 18 people perished because they were unable to escape a burning transport bus while 30 others were injured, including six children. Still, no one has been held liable either civilly or criminally, and the victims continue to await justice.<sup>44</sup> Investigations have revealed that the bus electrical system was tampered with to avoid overloading its fuses, causing an explosion in the air conditioning unit that subsequently ignited its coolant and sparked the blaze.<sup>45</sup> Responsibility for this event begins with the National Land Transit and Transport Authority ["Autoridad Nacional de Tránsito y Transporte Terrestre"], which allowed the vehicle to pass inspection despite its being in a condition that placed passengers' security and lives at risk—and ultimately led to this tragedy.

#### **I. Sexual and reproductive health:**

The World Health Organization's ["Organización Mundial de la Salud – OMS"] definition of health includes the concepts of "sexual health" and "reproductive health," as defined at the 1994 International Population and Development Conference ["Conferencia Internacional sobre Población y Desarrollo de El Cairo, 1994"]. These concepts implicate special recognition that adolescents require access to truthful, scientific information, as well as to professional and attentive reproductive and sexual health services. However, a 1998 study of adolescents' sexual and reproductive activity in the provinces of Panamá, Coclé and Chiriquí revealed that half of those surveyed had become sexually active between the ages of 14 and 16. This suggests that, despite consistent efforts at informing, educating and instructing this population, it still lacks clear understanding of related issues. To the contrary, many myths, taboos and untruths persist regarding unplanned pregnancies, HIV/AIDS, etc. Similarly, one notes the lack of a Sexual Education Program ["Plan de Educación Integral en Sexualidad"] in primary and secondary schools that would inform and instruct adolescents and children in these matters. It continues to be the teacher's personal decision whether and how to provide students with such information. This situation, along with the lack of specialized facilities in health clinics to provide comfortable care for this population, violates children's and adolescents' right to truthful, scientific health information.

The majority of childhood and adolescent pregnancies are described as unplanned. Those involved also report that, though they have some awareness of contraception methods, they typically were not utilizing them while engaged in sexual relations. Most of this population also appears to lack clear understanding of the laws, conventions and norms that protect and guarantee their rights with regard to sexual and reproductive health.

In the legal realm, a petition was presented to the Panamanian Attorney General ["Procuraduría General de la Nación"] requesting clarification of adolescents' right to receive sexual and reproductive health attention without the presence of their parents. This petition was brought because some physicians refused to provide such care, arguing that the law required presence of a parent or guardian and that to proceed otherwise would expose doctors to lawsuits. Despite the Attorney General's rejection of that argument, and affirmation that children's right to medical attention—even without a parent or guardian present—is inalienable, many doctors continue to deny such care to adolescents.<sup>46</sup>

#### **ARTICLE 6 QUESTIONS:**

- 1. Transitional justice—Regime during the years 1968-89:** Will the State adopt measures to prevent statutes of limitations from running on these crimes? If so, which crimes? Will the State comply with the recommendations of the Truth Commission? Will it extend the mandate of the Commission to facilitate more thorough investigation of

<sup>44</sup> LA PRENSA, October 24, 2006.

<sup>45</sup> LA PRENSA, October 27, 2006.

<sup>46</sup> Sexual and Reproductive Rights of Adolescents, Panamanian Association for Family Planning. Unpublished document, Panama, 2008.

lesser known crimes of the military dictatorship, including those of sexual violence as a method of torture? Will the State establish a national day of mourning as a means of healing? Will it address this issue in history books and programs of human rights study? What concrete actions will the State of Panama adopt to achieve Noriega's extradition or repatriation to Panamanian territory, so that he may serve his sentences for crimes against humanity? If established, how will the new Truth and Reconciliation Commission build upon the advances and recommendations already produced by the Truth Commission? What will the new Commission do to provide the individualized attention due to victims and their families? If established, will the new Commission's definition of "victims" be broadened beyond the current one? How will the monitoring function of human rights and civil society organizations be guaranteed in relation to the new Commission and its work? How will balance be struck in selecting the members of the Truth and Reconciliation Commission? What concrete measures has the State of Panama taken, and what measures will it take, to vindicate the rights to truth, justice and due compensation of those victimized by the invasion? What measures will it adopt to demand that the United States fulfill its related obligations? Will the State establish a Truth Commission on this issue? What related measures will the Office of the Human Rights Ombudsman take? Will investigations and legal proceedings be opened or reopened? Will the State establish a National Truth, Justice and Compensation Program in which victims and civil society, particularly those without close ties to government, may participate—thus guaranteeing transparency and impartiality in the process? Will it establish a national day of mourning as a means of healing? Will it address this issue in history books and programs of human rights study? Will it erect commemorative monuments? Has the State of Panama considered establishing a National Truth, Justice and Compensation Program open to all victims of international crimes committed on Panamanian territory?

- 2. Undetonated munitions abandoned by the United States on former firing ranges:** What concrete measures has the State of Panama taken to address the issue of these abandoned firing ranges? What related measures has the current government adopted, particularly in relation to the United States administration? What record is there of those dead or wounded? What actions have been undertaken to ensure that these victims are indemnified?
- 3. Live chemical weapons abandoned by the United States on San José Island:** What concrete measures will the current administration take with respect to the issue of chemical weapons on San José Island? Will the State make any related demands of the United States?
- 4. Passage through the Canal by ships carrying radioactive material:** Is the State prepared for the possibility of a radioactive disaster in the Panama Canal or other national waters? What plans does it have for addressing such an eventuality? Have those plans been adopted in consultation with civil society? Has the State considered denying the passage of ships carrying radioactive material? What measures has it taken to that end? What are the results of related legal claims for injunctions and why have these been ineffective? Why has the Panama Canal Authority ["Autoridad del Canal de Panamá (ACP)"] been secretive on these issues, and what is its position? Is nuclear disaster a possibility whether or not ships comply with relevant internationally recognized standards? Is a terrorist attack not possible? Will the State continue to permit passage by ships or submarines carrying nuclear weapons?
- 5. Deaths due to Dietilenglicol poisoning:** Why, more than one year after the Dietilenglicol tragedy, has the State of Panama not accepted its own responsibility, nor established civil or criminal liability in this case?
- 6. Deaths due to construction industry accidents:** What concrete measures will the State adopt to reduce the number of deaths caused by construction? What measures will it adopt to ensure justice in the case of assassinated union members? Has the State

complied with its duty to supervise and monitor managers' and workers' compliance with safety standards, particularly in the construction sector and other high risk industries? What concrete measures has it taken to enhance worksite safety, and how does it monitor related results in practice?

7. **Deaths of 18 individuals in a State-certified public transport bus:** Will the State effectively regulate safety standards for the protection of transport passengers? Are the State and the transportation authority jointly responsible for this tragedy? Please provide examples of concrete measures that the State will adopt to guarantee to the victims their rights to truth, justice and due compensation.
8. **Sexual and reproductive health:** Does the State of Panama have an effective sexual and reproductive health plan including actions aimed at safeguarding the adolescent population's access to its related rights? Does the State have national sexual and reproductive health legislation?

#### **ARTICLE 6 RECOMMENDATIONS:**

1. **Transitional justice—1968-89 Regime/1989 United States invasion:**
  - a. Implement the conventions that Panama has ratified related to crimes against humanity and torture, duly respecting their legal status as international treaties and conventions.
  - b. Reinitiate the process opened by the Truth Commission and based on its recommendations, or alternatively, through either the Office of the Human Rights Ombudsman or the Truth and Reconciliation Commission.
  - c. Create a National Truth, Justice and Compensation Program.
  - d. Include in the Truth Commission or its successor a participatory role for civil society, as well as for victims and their families. Additionally, create mechanisms for monitoring results and conducting investigations to determine the Commission's effectiveness.
  - e. Take action to achieve Noriega's extradition to Panamanian territory—if necessary through an accord with the United States; or alternatively, see through his extradition to France to ensure that he serves the sentences pending against him.
  - f. Seek apologies for the crimes against humanity committed during both the 1968-89 period and the 1989 United States invasion; this as a means of healing from errors that allowed statutes of limitations to pass on these crimes and left victims and their families without justice.
  - g. Through the Ministry of Education, order updates to the discussions of relations with the United States that appear in primary and secondary school history texts to include the topics of the 1989 invasion and of the disappearances that occurred during the 1968-89 period.
  - h. Through the Ministry of Foreign Relations ("Cancillería"), take measures to inquire into the current status of complaints brought before the Inter-American Commission of Human Rights and to keep the family members of victims—particularly those of the 1989 invasion—informed of the same.
  - i. Establish the date of December 20 as a national day of mourning and reconciliation.
2. **Undetonated munitions abandoned by the United States on former firing ranges/Live chemical weapons abandoned by the United States on San José Island:**
  - a. Publish an official list of victims killed or injured.
  - b. Seek, along with United States government, a bilateral and jointly responsible mechanism for cleanup of both former firing ranges and San José Island.
  - c. Guarantee indemnification to the families of victims killed or injured on the former firing ranges.
3. **Passage through the Canal by ships carrying radioactive material:**
  - a. Inform Panamanian society of the measures taken to prevent possible nuclear disaster due to an accident involving ships passing through the Canal carrying radioactive material.

- b. Reveal the related preventive measures that the Panama Canal Authority has taken or is considering taking.
  - c. Draft and publicize a report analyzing the claims for protection ["amparos"] presented to the Supreme Court requesting denial of passage to ships carrying radioactive material, with the aim of determining those responsible for delaying or taking no related decision—to the detriment of Panamanian citizens' security.
- 4. Deaths due to Dietilenglicol poisoning**
- a. Render a thorough report of the investigations conducted by panels of inquiry into poisoning by Dietilenglicol.
  - b. Implement mechanisms to speed both the administration of justice in these cases, and the indemnification of victims as well as their families.
  - c. Draft a report on the monitoring actions taken at the governmental level to ensure indemnification of poisoning victims.
  - d. Issue a public national government apology for Dietilenglicol poisoning, while adopting sanitation measures aimed at preventing tragedies of this sort from reoccurring.
  - e. Monitor, through the State, all continuing international actions so as to keep victims, their families, and society generally informed of the current status of related cases; additionally, initiate international proceedings against the drug manufacturers and others involved.
  - f. Order the removal of middle and upper-level drug company managers who failed to take appropriate related action.
- 5. Deaths due to construction industry accidents:**
- a. Reform national legislation to demand minimum safety standards for construction workers that correspond to those existing internationally, applying them equally to citizens and to documented or undocumented foreign laborers.
  - b. Establish financial and criminal penalties for those business owners responsible for workers' deaths due to noncompliance with safety standards.
  - c. Give an accounting of the monitoring performed in these cases, and of the measures taken to guarantee construction workers' safety.
- 6. Deaths of 18 individuals in a State-certified public transport bus:**
- a. Establish financial and criminal penalties for those directly and indirectly responsible for such accidents.
  - b. Establish an administrative career track within the Land Transit and Transport Authority to provide incentives to officials and reduce acts of corruption and improper influences involving them, transportation leaders, and broader society.
  - c. Implement effective controls to ensure that vehicle inspections are conducted in accordance with international standards for safety, holding public officials and others who commit related acts of corruption financially, administratively and criminally liable.
  - d. Issue a State apology for its direct responsibility in this tragedy, remove the administrative authorities responsible, and establish a governmental body tasked with indemnifying those affected.
  - e. Implement an accountability mechanism for the Land Transit and Transport Authority and for transportation leaders in relation to compliance with safety measures, helping at collective and individual levels to avoid similar tragedies. Additionally, monitor agreements to equip these vehicles with safety features and to ensure their functional condition.

## **Article 7**

### **Prohibition of torture and all cruel, inhuman and degrading treatment:**

**A. Continuing denial of truth, justice and compensation for family members of victims of the 1968-89 Regime and 1989 United States invasion of Panama:** The continuing denial of truth, justice and compensation for family members of victims of the de facto government 1968-89, and invasion of Panama constitutes in itself a form of torture and cruel, inhuman and degrading treatment. Related suffering increases when victims, members of the Truth Commission, and human rights organizations have seen their requests for an apology

denied by the State. The response to these requests has been left to biased individuals with military ties who disregard and confuse what is implicated by making an apology in the name of the State for its past actions and omissions in violation of human rights.<sup>47</sup>

**B. Conditions within Penitentiary Centers:** The State recognizes in its report the precariousness of the situation of those deprived of their liberty. In fact, practices in detention centers violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment. A recent study documents that police officers and civilian prison guards alike physically and mentally abuse detainees on a broad and systematic scale.<sup>48</sup> Such mistreatment includes constant threats and humiliation, as well as use of extreme force and excessive resort to tear gas bombs and other irritants.<sup>49</sup> In this context and in others, significant inequalities exist among the treatment given to different groups of detainees.<sup>50</sup>

Additionally, in a visit made on November 17, 2007 and discussed below at greater length, further circumstances were documented of violations of the right to physical integrity:

- a) Incarceration of more individuals than there is room, given the physical capacity of the relevant detention centers;
- b) Overcrowding in unsanitary conditions;
- c) Problems of sewage flooding prison cell blocks;
- d) Lack of restroom and shower facilities adequate in quantity and quality to allow prisoners privacy and dignity;
- e) Lack of categorization or separation of prisoners, particularly of those already convicted from preventive detainees;
- f) Rate of 63% among the prisoner population who still have no sentence;
- g) Lack of beds in sufficient numbers, and deficiencies of those that do exist in providing adequate sleeping accommodations for prisoners;
- h) Complaints of inappropriate searches of prisoners' family members and other visitors;
- i) Prohibition of weekend and holiday visits by lawyers, violating constitutional and convention-based guarantees of the right to effective defense and to free communication between defense attorney and client;
- j) Inability to conduct private lawyer-client meetings due to close observation by guards or other prison personnel; and
- k) Inadequate medical attention for prisoners. As one example, 18 detainees died in a single year of causes including AIDS, suicide, poisoning, intra-prisoner violence, asphyxiation and heart attack.<sup>51</sup>

**C. Lack of Water at the Joya-Joyita Penitentiary Complex:** The Joya-Joyita Penitentiary Complex is Panama's largest, holding approximately 7,000 of the national total of over 11,000 persons deprived of their liberty. On September 20, 2007, the Tocumen subregion of the National Aqueduct and Sewers Institute ("Instituto de Acueductos y Alcantarillados Nacionales (IDAAN)"), through memorandum No. 220-SR Tocumen, released the following comments concerning the water treatment plant serving the Joya-Joyita Penitentiary Complex:

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<sup>47</sup> "Crímenes de la Dictadura: Alto jerarca del partido oficial dice que la vía es la justicia penal. PRD no tiene que pedir perdón: Amado" (Crimes of the Dictatorship: High-ranking party official says that the answer is criminal liability. PRD does not need to request forgiveness: Amado"), La Prensa, 10 de agosto de 2007. (LA PRENSA, "Crimes of the Dictatorship: High-ranking party official says that the answer is criminal liability. PRD does not need to request forgiveness: Amado", August 10, 2007.)

<sup>48</sup> International Human Rights Clinic at Harvard Law School, "Del Portón Para Aquí Se Acaban los Derechos Humanos": *Injusticia y Desigualdad en las Cárcenes Panameñas* ("Human Rights Stop at the Gate," *Injustice and Inequality in Panama's Prisons*) March 2008, available at: [http://www.law.harvard.edu/programs/hrp/documents/Lanzamiento\\_hoy\\_carceles\\_de\\_Panama.pdf](http://www.law.harvard.edu/programs/hrp/documents/Lanzamiento_hoy_carceles_de_Panama.pdf).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Bureau of Democracy, Human Rights and Labor. *Country Report on Human Rights Practice: Panama, 2006*. US Department of State. March, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78900.htm>.

"In response to the September 3, 2007 letter of the Justice and Peace Commission ["Comisión de Justicia y Paz (CJyp)"] No CJP-AP25-2007, I inform you of the following results of our investigation into the supply of potable water to the La Joya and La Joyita penitentiaries: Both centers are served by a single water treatment plant constructed in 1995 by the Ministry of Government and Justice ["Ministerio de Gobierno y Justicia"]. Previously, IDAAN had provided water via tanker trucks. Since such date, plant administration has been fully the responsibility of the penitentiary. The treatment plant is today in deplorable condition due to lack of preventive maintenance. Additionally, almost all of the plant's equipment is in disrepair—thus causing the water shortage problems. The plant operates between the hours of 6:00am-6:00pm, but is currently working with only one small-capacity turbine. This is insufficient." (emphasis added)

On November 17, 2007, the Center for Democratic Initiatives ["CIDEM"], CJyP and the Panama Popular Committee for Human Rights ["Comité Popular por los Derechos Humanos de Panamá (COPODEHUPA)"] visited the Joya-Joyita Penitentiary Complex.

During that visit, which followed a torrential downpour, members of human rights organizations observed how the prisoners bent to scoop water from puddles that the rain had formed because they lacked any other water source after full collapse of the treatment plant. That collapse had transpired as many as 15 days before the visit.

Due to the total collapse of the plant, CIDEM and CJyP on November 21, 2007 presented a Habeas Corpus petition in the Supreme Court against the Ministry of Government and Justice and the General Directorate of the Penitentiary System ["Dirección General del Sistema Penitenciario"] based on the lack of water at the Joya-Joyita Complex.

In proceedings before the Court, answers by the authorities contesting the complaint were rife with falsehoods and inconsistencies, including claims of having resolved the water problems on November 21<sup>52</sup> or 22.<sup>53</sup> Despite media attention to the issue<sup>54</sup> and repeated calls made until January 10, 2008 by CJyP and CIDEM,<sup>55</sup> subsequent visits to the Joya-Joyita Complex<sup>56</sup> indicated that these problems continued. The penitentiary authorities have retained strict control over information, refusing to share it with civil society. The lack of a true response by the authorities contesting the complaint, and of true inquiry by the judicial authorities, signifies a failing of effective judicial oversight and has impeded civil society's ability to seek and receive information that would permit understanding of the full magnitude of the problem.

At the time of this writing, the Supreme Court still has not announced a decision with respect to the Habeas recourse; this despite medical studies demonstrating that a human being cannot survive denial of water for more than 5-7 days, and despite its receipt of reports that more than 300 individuals have fallen ill due to lack of water.<sup>57</sup> The State has made no effort to determine how many individuals have been affected by the shortage.

<sup>52</sup> The Ministry of Government and Justice asserted on November 26, 2007 through note No. 2662-DAL that "given the installation of the motor previously mentioned, the Joya-Joyita Penitentiary Complex has since November 21, 2007 been receiving potable water during the day.")

<sup>53</sup> The General Directorate of the Penitentiary System asserted on November 26, 2007 through note No. 2243-DGSP-DAL that "we are able to inform you that as of November 22 of the current year, we have installed a new motor permitting daytime water supply for the La Joya Penitentiary Complex."

<sup>54</sup> See LA PRENSA, "Defensoria Investiga maltratos" ("Ombudsman Investigates Mistreatment"), December 7, 2007; PANAMÁ AMÉRICA, "Realidad Penitenciaria opaca Día Internacional de Derechos Humanos" ("Prison Reality mars International Human Rights Day"), December 9, 2007. Both articles relate to the persistence of water shortage at the Joya-Joyita Complex following the dates by which the authorities claimed to have resolved the problem.

<sup>55</sup> CIDEM received on January 10, 2008, a telephone call by detainees in the La Joyita center who reported that water was arriving for only half an hour per day and was thus insufficient to allow all prisoners to bathe or drink. They also complained of serious problems relating to human waste disposal. These various problems are aggravated with the arrival of the dry season when outside temperatures will rise.

<sup>56</sup> Visit to the La Joyita center, performed by Víctor Atencio G., CIDEM, November 29, 2007.

<sup>57</sup> PANAMÁ AMÉRICA, "Enfermedades atacan a reclusos por falta de agua en los penales" ("Illnesses plague detainees due to prison water shortage"), December 10, 2007.

Given this delay in resolving the Habeas Corpus petition, CIDEM presented a request for precautionary measures to the Inter-American Commission on Human Rights. The Commission, in turn, requested a report from the State regarding CIDEM's petition. The State had until January 25, 2008 to provide this information.

It is clear that the State has failed in its role of guarantor, and not guaranteed access to water for those persons deprived of their liberty. This represents an intrinsic violation of the right to life and physical integrity. Further aggravating this situation are other conditions that the lack of water engenders in the Complex. These include difficulties in personal hygiene, sewage disposal, and further such activities requiring water. Additionally, with the impending dry season and corresponding rise in temperatures, such problems and the need for water will grow only greater.

Incarceration in the conditions here described is a form of torture. Nevertheless, authorities in the Attorney General's Office ["Ministerio Público"] have undertaken no related investigation—despite torture being among the crimes for which it can initiate action. Nor has an investigation begun into the Supreme Court's failure to exercise its due function in this case.

The Supreme Court's unjustified delay in considering the petition put before it merits particular attention. What this failure to act meant in practice was the prolonging of suffering by those persons deprived of their liberty and of lacking access to water. Given the urgency in this case, it is improper to make comparisons to the amount of time typically involved in completing other judicial procedures; one must acknowledge, in particular, the manifest gravity of the current case. Of great concern is the possibility that the lack, or tardiness, of a judicial decision may be rooted in an interest in leaving this problem to resolve itself through mere passage of time.

**D. Situation of migrants and asylum seekers detained in the La Palma Prison and Migrant Detention Center:** The detention of migrants and asylum seekers continues to occur in public prisons and migrant detention centers that do not afford optimal conditions for the protection of these individuals. In no way can detention in a prison be considered a means of protecting refugees or asylum seekers. The practice of housing such individuals, including children, alongside criminals and in conditions of overcrowding represents a serious violation of refugees' and children's rights, *inter alia*, to receive protection and to individual liberty.<sup>58</sup>

#### **ARTICLE 7 QUESTIONS:**

- 1. Continuing denial of truth, justice and compensation for the families of victims of the 1968-89 Regime and 1989 United States invasion:** Has the State considered providing additional compensation for those affected by these events? Has it officially and publicly requested forgiveness for the violations then committed?
- 2. Conditions within Penitentiary Centers:** What measures is the State taking to guarantee that neither the police nor civilian prison guards torture detainees or subject them to cruel, inhuman or degrading treatment, and that those who commit such crimes are brought to justice? Please provide specific examples of representative measures taken in such cases.
- 3. Situation of migrants and asylum seekers detained in the La Palma Prison and Migrant Detention Center:** How does the State of Panama, having signed and ratified related conventions and passed domestic legislation prohibiting detention of asylum seekers, explain its continual violation of the liberty and security of this population for over 30 years? Will the State modify those provisions in Decree 23 of 1998 that conflict with the Convention of 1951, the International Covenant on Civil and Political Rights, and other relevant human rights instruments?
- 4. Lack of Water at the Joya-Joyita Penitentiary Complex:** What measures has the State adopted to resolve the lack of water at the Joya-Joyita Complex? Have investigations begun into assigning responsibility for torture, understanding the magnitude of the problem, and determining which detainees suffered violations of their rights to

<sup>58</sup> Fernando Wing, et al, "Los refugiados y la legislación sobre el derecho al asilo en la República de Panamá" ("Refugees and asylum legislation in the Republic of Panama"), in *ASILO Y REFUGIO EN LAS FRONTERAS DE COLOMBIA (ASYLUM AND REFUGEE ON COLOMBIA'S BORDERS)*, PCS, Bogotá, 2003.

health and to physical integrity? What treatment have those affected by the water shortage received?

**ARTICLE 7 RECOMMENDATIONS:**

- 1. Continuing denial of truth, justice and compensation for the families of victims of the 1968-89 de facto military government and 1989 United States invasion:**
  - a. Formally and publicly issue a State apology to the families of those victimized by the military dictatorship and the United States invasion.
  - b. Create a body tasked with morally indemnifying the families of victims, without preempting—in the case of the invasion—their eligibility for indemnification by the United States government.
- 2. Conditions within Penitentiary Centers:**
  - a. Respect all international obligations absolutely prohibiting torture.
  - b. Ensure that police and civilian security officers found to be committing abuses against prisoners are held accountable and effectively sanctioned.
  - c. Allocate a budget sufficient to implement Law 55 and to achieve its goal of rehabilitating those imprisoned.
  - d. Bring the Penitentiary Policy Board together regularly, and facilitate the participation of civil society actors.
  - e. Implement alternative measures to preventive detention whenever possible, reserving the latter for cases of absolute necessity.
- 3. Situation of migrants and asylum seekers detained in the La Palma Prison and Migrant Detention Center:**
  - a. Implement mechanisms that guarantee existing safeguards for those persons seeking international protection, including the principle of non-return and prohibition of placing them in detention.
  - b. Include in reform or regulation of the 2008 Migration Law [“Decreto Ley 3 de 2008 de Migración”] additional safeguards necessary to comply with obligations related to persons in need of international protection.
  - c. Train police and migration officials in international refugee law, human rights law, and related safeguards.
- 4. Lack of Water at the Joya-Joyita Complex:**
  - a. Provide a follow-up report detailing the actions that the State has taken to solve the situation.
  - b. Present an updated report on the health effects suffered by those detainees affected by the shortage of potable water.
  - c. Identify the officials responsible for the water situation, initiating civil, criminal and administrative proceedings against them.
- 5. General recommendation:**
  - a. Join the States adopting the United Nations Optional Protocol to the Convention against Torture, which involves establishing a system of supervision of the human rights situation in all State detention centers, including (i) prisons, (ii) immigrant and refugee holding centers, and (iii) psychiatric hospitals.

**Article 8**

**Prohibition of slavery, servitude and forced or compulsory labor, including sexual exploitation, debt-induced servitude and the sale of children**

**A. Sexual exploitation and abuse of women, children and adolescents:**

In recent years, Panama has seen an increase in cases of sexual abuse against minors, particularly women under 18 years of age. In most cases, the perpetrator was familiar to the victim. Panama has also been affected by the scourge of commercial sexual exploitation, which primarily harms women, children and adolescents of both sexes. However, the new Penal Code, which enters into force in 2008, does not include the crime of procurement of persons, marking a setback in the fight against this form of modern slavery. Additionally, Panama has not developed a framework for education in sexuality and sexual and reproductive health, thus further contributing to the situation of vulnerability that feeds abuse and commercial sexual exploitation. Panama also has not developed programs for preventing the abuse of children and

adolescents, or programs to care for victims of abuse or exploitation. Most victims do not have access to needed services like therapy. Two non-governmental organizations, El Orfanato San José de Malambo and Casa Esperanza de Panamá, are developing programs to implement the Public Policies relating to Commercial Sexual Exploitation and Sexual Abuse set out in the Strategic Plan for Children and Adolescents, 2003-2006 and 2006-2015. The first evaluation of the Strategic Plan was slated for 2006, but has not yet taken place.

In the U.S. State Department's 2007 Trafficking in Persons report, Panama is noted as a transit country for traffickers. Although Panamanian authorities have taken steps to fight trafficking, their actions are insufficient and on occasion contradictory, as with the process of issuing "alternadora" visas and the collection of municipal taxes from those involved with so-called "legal prostitution".

-The Technical Judicial Police's (*Policía Técnica Judicial*) 2005 statistics note 705 cases of sexual abuse, of which 653 involved women between 0-17 years of age.

-The approval of the new Penal Code effectively revoked Law 16 of 2004, on the commercial sexual exploitation of minors. With its revocation, the National Commission for the Prevention of Crimes of Commercial Sexual Exploitation (CONAPREDES) has ceased to function, dramatically reducing the efforts and resources available to finance programs for awareness, prevention, and training, and for treatment and rehabilitation of victims. Law 16 also provided for the financing of such programs through taxation of the adult video rental and sale business, and adult theaters.

**B. "Alternadora" visas:** Decree 16 of 1960 provides for a type of artist's visa. This visa is sometimes obtained by prostitutes, classified as "alternadoras" for purposes of the visa. Prostitutes can thus work legally for the duration of the visa's validity. The legalization of prostitution by immigrant women, through this immigration option, facilitates human trafficking.

#### **Article 8—Questions:**

##### **1. Sexual exploitation and abuse of women, children and adolescents:**

Are there existing mechanisms for the implementation of laws and norms designed to prevent, punish and eradicate abuse, sexual exploitation, and other forms of sexual slavery? If so, please provide specific examples of their application and statistical data demonstrating how effective they have been. Will the crime of procurement be reestablished in criminal law? With the effective revocation of Law 16 of 2004, the body charged with monitoring efforts to prevent and eradicate sexual exploitation (CONAPREDES) no longer exists. What new body will be charged with this task? Where have the resources of the Special Fund to combat sexual exploitation been allocated? How are they being used?

2. **"Alternadora" visas:** Given Panama's efforts in other areas to combat sexual exploitation, will the granting of artist's visas that can be used for trafficking in persons and the sexual exploitation of immigrants continue?
3. **Domestic workers:** Why is the practice of enslaving domestic workers, a form of trafficking in persons which affects both immigrants and Panamanian citizens, not criminalized?

#### **Article 8—Recommendations:**

##### **1. Sexual exploitation and abuse of women, children and adolescents:**

- a. Create an organization for the protection of victims of sexual exploitation to replace CONAPREDES, with the participation of the Judiciary Branch, the Ministry for Social Development, the Office of the Human Rights Ombudsman, and non-governmental organizations, so that victims are assisted with both judicial and psychosocial needs.
- b. Implement a campaign for the prevention and eradication of this problem.
- c. Present a report on the actions taken by the government to combat sexual exploitation, including information on the use of the Special Fund to combat sexual exploitation.
- d. Develop effective educational programs that will promote an environment in which equal opportunity policies can develop.
- e. Charge a state body with the task of preventing sexual exploitation.

- f. Re-establish the crime of procurement of persons in Panamanian legislation.
- g. Establish monitoring mechanisms for the areas most affected by problems of sexual exploitation, so that they may develop programs to eradicate it.
- h. Improve programs for the prevention of commercial sexual exploitation in high-risk areas and schools.

**2. "Alternadora" visas:**

- a. Eliminate this type of visa, because of its contribution to the problem of trafficking in persons.
- b. Establish and enforce monetary and criminal penalties against the owners of establishments that exploit sex workers or demand sex work in exchange for debts incurred.

**3. Domestic workers:**

- a. Criminalize the practice of enslaving domestic workers, or create a law to punish the practice through monetary and civil penalties.

### **Article 9**

#### **The right to liberty and security of person through the prohibition of arbitrary arrest or detention**

##### **The right of persons deprived of liberty to appear before a judge within a reasonable time, in order to determine the lawfulness of the detention:**

The new Penal Code was approved in 2007 and will enter into force in May 2008. The National Assembly is currently debating a new law that would create Panama's first Code of Criminal Process. These Codes do not resolve the problem of the slow pace of the criminal justice process, and they do not address the need for improvements to the penitentiary system.

The new Penal Code only minimally addresses security measures, giving the state almost unlimited authority to engage in crime-fighting through informal policies. Although Panamanian society successfully pressed for the creation of a formal, written document elaborating the state's crime-fighting policies, this document has not yet been utilized in practice.<sup>59</sup>

The annual budgetary allocation requested for the penitentiary system has tripled between 1996 and 2006, with \$37.4 million requested in 2006. However, each year the final budget allocates only \$12.8 million for the system, far below what is requested.<sup>60</sup>

##### **Arbitrary detention of immigrants and asylum-seekers:**

It is the policy of immigration, police and customs officials to detain or, in their parlance, "retain" persons without justification. In 2007, Monsignor Pedro Hernández, Bishop of the Vicariate of Darién, was "retained" by immigration and customs officials at an airport. His passport was seized for examination and was not returned promptly.<sup>61</sup> Immigration officials carried out operations in 2007 in which nearly 100 people were detained, but only three were ultimately arrested.<sup>62</sup> These practices are seen both in Panama City and in the Colombian border area, more often in the latter. Deportations of Colombian citizens and nationals of other South American countries are often carried out without respect for the due process guarantees established in Decree 160 of 1960, which regulates immigration issues in Panama.<sup>63</sup>

#### **Article 9—Questions:**

1. **The right of persons deprived of liberty to appear before a judge within a reasonable time, in order to determine the lawfulness of the detention:**

<sup>59</sup> In accordance with the current Penal Code, articles 106-111 and Law 14 (May 18, 2007) adopting the new Penal Code, articles 122-125.

<sup>60</sup> Figures from: <http://www.alianzaprojusticia.org.pa/site/images/archivos/15>

<sup>61</sup> Panorama Católico, February 2007.

<sup>62</sup> Diario La Prensa, Apr. 1, 2007.

<sup>63</sup> *Supra* note 8.

Does the state of Panama have a formal crime-fighting policy? If so, are there mechanisms and resources to oversee its implementation? Are the resources allocated by the state to the penitentiary system sufficient to meet the system's needs and to accomplish the goal of rehabilitation of criminals? What measures is the state taking to ensure the full participation of civil society in the current debate over the new Code of Criminal Process?

**2. Arbitrary detention of immigrants and asylum-seekers:**

Panama is a signatory to the Refugee Convention of 1951 and other international instruments relating to migration, and has implemented these instruments into its domestic law through Decree 23 of 1998, prohibiting the detention of asylum-seekers. What explanation is there for the state's continued violation of domestic and international standards for the treatment of immigrants and refugees? Why does the state continue to detain many immigrants, including children, using practices that essentially criminalize immigration?

**Article 9—Recommendations:**

**1. The right of persons deprived of liberty to appear before a judge within a reasonable time, in order to determine the lawfulness of the detention:**

- a. The state of Panama should respect article 10(3) of the ICCPR to the penitentiary system, and take all necessary measures to establish a humane penitentiary system that complies with established principles.
- b. The state of Panama should, with the participation of civil society, design and implement a plan for the criminal justice system, including crime-fighting policies, criminal procedure, and the provision of necessary resources.

**2. Arbitrary detention of immigrants and asylum-seekers:**

- a. In domestic immigration and refugee law, ensure that the necessary safeguards are in place to protect the human rights of immigrants and refugees. The principle of non-refoulement should be respected, and immigrants should not be turned away at the border or deported for having entered without documents.
- b. Ensure respect for the principle of non-refoulement by training immigration officials and border and airport police officers.
- c. Build shelters to house immigrants who have entered without documents, instead of detaining them in facilities intended for criminals.
- d. Provide economic support to civil society to create centers for immigrants in which they can receive support during the immigration or asylum process.
- e. Comply with the provisions of the Convention on the Rights of the Child and the American Convention on Human Rights relating to the protection of migrant children and adults.

**Article 10**

**The right to humane treatment of persons deprived of liberty, including the separation of those in process from convicted prisoners, minors from adults, and the rehabilitative aim of the penitentiary system:**

**A. Penitentiary system<sup>64</sup>:** Although Panama's domestic law (Law 55 of 2003, on the reorganization of the penitentiary system) and international commitments require the protection of the human rights of those deprived of liberty, grave and systematic violations of human rights persist in Panama's detention facilities.

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<sup>64</sup> The information from this section was extracted from the recently published report of the International Human Rights Clinic at Harvard Law School: "*Del Portón Para Aquí Se Acaban los Derechos Humanos*": *Injusticia y Desigualdad en las Cárcenes Panameñas* ("Human Rights Stop at the Gate,": *Injustice and Inequality in Panama's Prisons*) March 2008, available at: [http://www.law.harvard.edu/programs/hrp/documents/Lanzamiento\\_hoy\\_carceles\\_de\\_Panama.pdf](http://www.law.harvard.edu/programs/hrp/documents/Lanzamiento_hoy_carceles_de_Panama.pdf).

Overcrowding: Overcrowding is a serious problem, with some detention centers holding two, three, or four times their official capacity. In some centers, detainees have resorted to constructing elaborate and dangerous systems of handmade hammocks, fastened near electric cables and leaking ceilings, in order to create space to sleep. Detainees frequently fall from these hammocks, and are sometimes seriously injured. Overcrowding is exacerbated by the fact that some detention centers are housed in buildings that were not originally constructed for the long-term housing of prisoners—in particular, the use of police stations as detention facilities. For example, a visit made in March 2007 to the La Chorrera police station, found 595 detainees held in a space intended for no more than 175. In one area of the police station, 64 detainees were kept in a poorly-ventilated space of no more than 40 square meters. Overcrowding is not simply the result of inadequate infrastructure; poor administration also contributes to the problem. Some detention facilities are operating below capacity, and detainees with more economic resources are sometimes able to obtain far better living conditions than detainees without such resources.

Inadequately trained and insufficient personnel: The majority of prison guards in detention centers are police officers who take on custodial responsibilities in prisons as part of their duties, without adequate training in prison administration. Detention centers are often short of staff; on the day of an investigation of the La Joya/La Joyita prison complex, 75 police officers were charged with guarding more than 3,000 detainees. As a result, many cells are guarded only by detainees trusted by the prison staff.

Health problems: Detainees in need of medical attention often have to wait days, even weeks, before they are taken to the prison clinic. Centers like Nueva Esperanza and the La Joya/La Joyita complex have only one or two doctors to care for thousands of detainees. Clinics are poorly equipped and often lack medical equipment and medicines. Detainees suffer from skin rashes and respiratory problems. Detainees with tuberculosis reported that they do not undergo medical examinations to monitor their health, and HIV-positive detainees reported that they do not receive anti-retroviral medication. Finally, a lack of potable water aggravates existing health problems. In the La Joya/La Joyita complex, housing more than 5,000 detainees, water service was frequently interrupted in 2007 and diarrhea resulting from poor water quality was a common complaint among detainees.

Lack of separation of detainees: To date, there exists no identifiable functioning legal system for the separation of detainees. Those in pre-trial detention share cells with sentenced prisoners, and first offenders are housed with re-offenders.

Lack of compliance with the Standard Minimum Rules: Panama's penitentiary system does not comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Many facilities exhibit deplorable, unhygienic conditions, including a lack of adequate ventilation, natural light, and potable water, high humidity and oppressive heat in the summer months, and water leakages into cell areas. These conditions create an environment in which pests, contagious diseases, and respiratory and skin ailments flourish.

Abuse by guards: Numerous cases of abuse by police guards have been reported in detention centers across the country. In a September 2007 incident currently under investigation, a detainee was allegedly beaten to death by police guards.

Lack of rehabilitation: Although Article 28 of Panama's Constitution declares the penitentiary system to be founded on the principle of the rehabilitation of the prisoner, in reality many detention centers do not provide adequate rehabilitation programs. Programs for the social reintegration of prisoners who have completed their sentences are also lacking.<sup>65</sup>

### **Article 10—Questions:**

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<sup>65</sup> Informe de Derechos Humanos de la Comisión de Justicia y Paz 2005, 2006 (Human Rights Report of the Justice and Peace Comisión, 2005 and 2006); see also various reports of the Justice and Peace Commission on the penitentiary system.

1. What measures is the state taking to reduce overcrowding in prisons, apart from constructing new detention facilities?
2. What measures is the state taking to fulfill its promise to hire and train enough civilian guards to ensure that all detention facilities are staffed with civilian guards?
3. What measures is the state taking to ensure that all prisoners live in sanitary conditions and have access to medical care? Specifically, what is the state doing to prevent the transmission of diseases like tuberculosis and HIV/AIDS, and to care for prisoners with serious injuries?
4. What measures is the state taking to implement the provisions of Law 55 of 2003 relating to the rehabilitation of prisoners?

**Article 10—Recommendations:**

1. Implement and respect the Standard Minimum Rules for the Treatment of Prisoners in all detention facilities in Panama, including rules relating to the quality of food and water, outdoor recreational time, and visits from family and friends.
2. Implement alternatives to pre-trial detention to reduce prison overcrowding.
3. Provide training for civilian and police guards on the human rights of detainees, the Standard Minimum Rules, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment. Familiarize prison personnel with all international instruments relating to the conduct of law enforcement officials and the treatment of detainees.
4. Respect the human rights of detainees who suffer from HIV/AIDS, and implement measures to avoid the spread of disease within detention facilities.
5. Provide sufficient resources for the implementation of Law 55, with a particular focus on the rehabilitation of detainees.

**Article 12**

**The right to liberty of movement and freedom to choose one's residence:**

**A. Violation of the right to choose one's residence due to the expansion of tourism projects, hydroelectric projects, and mines:** Panama has encouraged projects related to development within areas inhabited by indigenous populations that lack the protection of the law. These projects have resulted in the displacement of the population, without any guarantee that they will be provided with adequate land or living conditions.

**Tourism projects in the Archipelago de Bocas del Toro.**

In the last ten years, the government has encouraged construction projects for tourism and vacation homes in the Bocas del Toro area. These projects are portrayed as positive developments for one of the poorest provinces of the country. However, in the past year many reports have surfaced of irregularities in the buying, selling, and titling of land in this area. Most affected by these irregularities are members of the Ngobe ethnic group, many of whom have been forced to leave their land and their homes to make way for hotels and marinas. The mayor of Bocas del Toro, Eligio Binns, said in 2006 that "We have already begun to see the first cases of families displaced by these projects. Today we have people living on mangrove swamps due to a lack of land available for those who have been expelled from the land on which they have always lived."<sup>66</sup> Although there are no exact figures for the number of people affected, it is estimated that in each community, five to ten families are involved in land conflicts of some type. The situation has led to the creation of several organizations that are challenging these displacements. The leaders of these groups, and other individuals opposed to the displacements, have been threatened and attacked on more than one occasion.<sup>67</sup>

Private armed guards are an increasingly frequent sight in the Bocas del Toro area. These guards keep watch over the coastal territories under development (Binns, 2006). The situation has been aggravated by the introduction of Law 2 (Jan. 7, 2006). This law is designed to

<sup>66</sup> Binns, Eligio. 2006. Archipiélago de Bocas del Toro: nos están destruyendo la esperanza (Archipelago de Bocas del Toro: They are destroying our hope). Palabras ante la Asociación Panameña de Ejecutivos de Empresa (Speech delivered to the Panamanian Association of Business Executives). June 23, 2006.

<sup>67</sup> Martínez, Hernán. 2006. Corrupción: sigue venta ilegal de tierras (Corruption: The illegal sale of land continues). *El Siglo*, Nov. 1, 2006.

incentivize investment in tourism projects, and removes the municipality's authority to intervene in irregular activity. Article 30 of Law 2 establishes that "no municipal authority will have the ability to impede or delay the commencement of authorized projects on land transferred in conformity with the terms of Law 2 (Jan. 7, 2006)." Some lawyers contend that this law directly violates Articles 232 and 233 of the Panamanian Constitution. Most of the problems outlined above have not been investigated nor resolved, despite numerous complaints made to the government and through the media.

#### **Hydroelectric project Chan-75.**

The construction of the hydroelectric project Changuinola I (Chan-75), owned by the U.S. corporation AES, is the first of three major energy projects in Panama, and will result in the forced relocation of over one thousand indigenous persons of Ngobe ethnicity. The project will affect the lives of thousands more. Mechanisms for obtaining the prior, free and informed consent of the population have not been established, despite the tremendous social and cultural impact the project will have on the lives of those in the area. The Public Forum for the Study of Environmental Impact, one of the few sources of information on the project available to the affected population, took place without any significant participation by the communities that will be displaced by the project, because funds were not provided for them to travel to the location of the Forum. Construction of the dam began before a relocation plan approved by all parties and in compliance with the requirements of the World Commission on Dams had been developed.

This project has involved illegal relocations, forced agreements, and massive destruction of the subsistence farm plots of various indigenous families in Nance de Riscó, Charco de La Pava and Valle del Rey, for which they have not been compensated. A typical case is that of Señora Isabel Becker, an illiterate Ngöbe widow, owner of part of the land on which the dam is being constructed. After having been harassed for months, she put her fingerprint on a private contract that, unbeknownst to her, ceded her family's land to the AES Changuinola company.<sup>68</sup> On October 27, 2007, approximately ten units of the national police forcibly removed her from her home.

Local leaders have been threatened and persecuted; women, children, and elderly persons have been mistreated and illegally arrested, and the rights to freedom of movement and association have been violated. These abuses were committed with the approval and participation of staff from AES and the Danish capital firm Changuinola Civil Works. No government institution is clearly charged with protecting the constitutional rights of the indigenous population or ensuring compliance with legal standards, despite numerous complaints made to the National Environmental Authority, AES Changuinola, the Changuinola mayor's office, and the Human Rights Ombudsman.

On January 3, 2008, Sub-Commissioner José Manuel Ríos of the National Police ordered the forcible occupation of the Ngobe territory in the Corregimiento de Valle de Riscó in Bocas del Toro Province, in the La Amistad Biosphere Reserve, in order to allow construction of the hydroelectric project to move forward.<sup>69</sup> The police have worked with AES Changuinola to maintain a permanent presence in the area. There are guards posted in the area to examine the documents of anyone who passes and to conduct searches. The guards refuse to allow some of those stopped to continue on their way.

On January 2, 2008, the police refused to allow three journalists to enter the Charco la Pava community. A Peace Corps volunteer was also denied entry, and on February 21, 2008, a group of environmental activists seeking to gather information on reported human rights violations

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<sup>68</sup> Shors, Benjamín. 2007. Panama's farmers resist hydroelectric projects. Miami Herald, Oct. 2, 2007 <http://www.miamiherald.com/business/story/269961.html>

Lutz, Ellen. 2007. Dam Nation. Cultural Survival Quarterly, Winter 2007.

<sup>69</sup> Asociación para la Conservación de la Naturaleza (Association for the Conservation of Nature), communications on January 8 and 9 and February 12 and 22, 2008 comunicados del 8 y 9 de enero y del 12 y 22 de febrero

connected to the hydroelectric project were also denied entrance.<sup>70</sup> The three journalists were told that there had been a landslide and that they could not continue for security reasons. However, fifteen minutes later, they witnessed five police vehicles traveling the same road in the same direction they had been moving. The environmental activists stopped on February 21 were escorted to Ojo de Agua, a non-indigenous area near the dam site. According to the police, entry to Charco la Pava was permitted only for construction workers, community residents, or the police. The activists' request for a meeting with representatives from the community was denied and they were informed that communication with community residents was not permitted for the duration of the construction project. A police officer forbade them from disclosing information about the individuals who denied them access to the community. A complaint made two months ago to the Supreme Court of Justice is still pending, and the Professional Responsibility Unit of the National Police has neglected the complaints lodged against the police.

The elimination of subsistence farming, the restrictions on movement faced by indigenous communities, and the installation of a permanent police presence between Nance de Risco and Charco de La Pava suggest that the government has decided to militarize the area in order to obtain the involuntary consent of the Ngobe population of the La Amistad Biosphere Reserve area, in effect forcibly displacing the population from its territory. Recent events suggest that the rule of law has disappeared in Bocas del Toro province. Ernesto López, a community leader, states that "our communities are under a state of siege."

#### **B. Limitations on movement of beneficiaries of temporary protected status:<sup>71</sup>**

The humanitarian statute granting temporary protected status to certain immigrants should be revised or replaced with new legal initiatives, with a view to the following:

- The status is temporary. It lasts for only two years, while many of the persons who acquire the status have been living in Panamanian territory for 7-11 years. The status does not adequately address its beneficiaries' needs for protection and stability.
- Temporary protected status violates freedom of movement and hinders the possibility of obtaining more permanent legal status. For these reasons, a process of stabilization of legal status has been initiated for these individuals.
- Currently, voluntary repatriation is seen as the solution to many immigration problems, but in reality, many fear for their lives if they are forced to return to their home countries.<sup>72</sup>

At the eleventh "Neighborhood Meeting" with the government of Colombia in 2006, the Panamanian and Colombian governments agreed to stabilize the legal status of individuals holding temporary protected status. However, the newly-issued Decree Law 3 of 2008 goes against the spirit of this agreement and of the Refugee Convention, as it allows the Refugee Protection Commission to issue temporary extension of status permits, renewable every two months, to those with temporary protected status. This provision merely prolongs the uncertainty and instability of such individuals' situations.<sup>73</sup>

#### **C. Infringement of refugees' right of residence:**

Despite the existence of a legal project to award residency to those who have lived as refugees in Panama for many years, in reality refugees have no right to residence. They may only apply for a special residency permit from the Immigration Authority, renewable annually.

<sup>70</sup> ACD communication, *Policía Nacional impide la entrada a la comunidad indígena de Charco la Pava* (Police bar entry to the Charco la Pava indigenous community), Feb. 22, 2008.

<sup>71</sup> Decree 23 of February 10, 1998, Title II.

<sup>72</sup> Wing, Fernando. "La situación de los refugiados de Panamá" (The situation of refugees in Panamá), *La Prensa*, June 9, 2005.

<sup>73</sup> XI Reunión de la Comisión de Vecindad Panameña – Colombiana (11th Meeting of the Panamanian-Colombian Neighborhood Commission), Panama City, Feb. 5-7, 2006, p. 2

In addition, many Salvadoran and Nicaraguan citizens have lived in Panama for over twenty years as a result of the violence in their home countries. Some do not qualify as refugees or have revoked their refugee status. Although some of these individuals have children born in Panama or are married to Panamanian citizens, they lack the means to naturalize and can only obtain special permits at the discretion of the Immigration Authority.<sup>74</sup>

The Executive Organ issued Decree Law 3 on February 22, 2008.<sup>75</sup> This law created the National Service of Immigration and Naturalization of 2008. However, the new law fails to resolve the problems caused by pre-existing requirements that an individual revoke his refugee status prior to applying for permanent immigration status in Panama.

The aforementioned Decree Law does not resolve the problem of Central Americans who have spent more than 20 years living in Panama and are in need of permanent immigration status, though they may not qualify as refugees.

#### **Article 12—Questions:**

1. **Violation of the right to choose one's residence due to the expansion of tourism projects, hydroelectric projects, and mines:**  
What measures has the state taken to evaluate the development projects that have resulted in the relocation of citizens? What measures is the state taking to guarantee that indigenous populations that have left their territory are provided with land sufficient to maintain their way of living and respect their cultural heritage?
2. **Limitations on movement of beneficiaries of temporary protection status:** Why has the state not awarded resident status to the more than 800 people under temporary protected status, in accordance with the agreement reached with the Colombian government at the 2005 "Neighborhood Meeting"? Why has Panama not granted some form of protection to individuals fleeing the Colombian conflict who do not technically qualify as refugees?
3. **Infringement of refugees' right of residence:** Why does Panama, a signatory to the Refugee Convention, not recognize the right of residence of refugees as a means of integrating them within the country? Why have Salvadoran and Nicaraguan immigrants who have lived in Panama for over 20 years and forged lasting ties in the country not been offered the benefit of residency?

#### **Article 12—Recommendations:**

1. **Violation of the right to choose one's residence due to the expansion of tourism projects, hydroelectric projects, and mines:**
  - i. Comply with regulations that require a company to conduct an environmental impact study, attain the approval of the National Authority for the Environment (ANAM), and consult with communities before being awarded a land concession.
  - ii. Provide humane housing arrangements for persons displaced by the aforementioned construction projects.
2. **Limitations on movement of beneficiaries of temporary protection status:**
  - i. Stabilize the legal status of the population currently under temporary protected status, in accordance with the 2006 and 2007 "Neighborhood Meeting" agreements.
  - ii. Eliminate the provisions of Decree Law 3 of 2008 that allow the newly-created National Service of Immigration and Naturalization to issue temporary extension of status permits to persons under temporary protected status, a situation which perpetuates the problem of immigrants possessing indefinite status within the country.
3. **Infringement of refugees' right of residence:**
  - i. Create and implement a law for refugees that corresponds to the standards of humanitarian protection set out under international law. Provide permanent immigration status to refugees and end the policy of requiring individuals to

<sup>74</sup> Justice and Peace Commission case, 2005.

<sup>75</sup> Decree Law 3 available at: <http://www.panamajustice.com/DecretoLey3deMigracion.pdf>

revoke their refugee status in order to apply for more permanent forms of status.

ii. Create and implement complementary forms of protection for individuals who may not qualify for refugee status, but have spent more than 20 years in Panama without being able to obtain permanent immigration status.

### Article 13

#### The right to due process in deportation cases

In April 2003, in direct violation of the principle of non-refoulement, the state of Panama forcibly deported 109 asylum-seekers, including 60 children, who had arrived in Panama from the community of Punusa, Alto Tuirá, located in the province of Darién a Zapzurro, Colombia, asking for governmental protection. Unfortunately, this was not an isolated incident: although the State of Panama has paid lip service to its commitment to voluntary repatriations<sup>76</sup>, and in spite of precautionary measures issued by the Inter-American Commission on Human Rights<sup>77</sup>, both the national police and the national immigration units continue to forcibly deport asylum-seekers in frontier regions. The government conducts deportations without adequate notice, and other due process guarantees set forth in Article 13, and immigration authorities often enjoy wide latitude in deciding whom to deport. Unclear and often incoherent governmental regulations lead to wide divergences in deportation timelines: some detainees are physically deported only days after being detained, while others remain in detention for weeks.<sup>78</sup>

For example, immigration authorities deported an asylum-seeker detained in the “La Palma” jail without even processing his asylum application and neglecting to notify the National Body for Refugee Affairs (ONPAR), as required by law.<sup>79</sup> Similarly, a myriad of Colombian, Peruvian and Ecuadorian migrants have been deported without due process.<sup>80</sup> In an even more egregious violation of refugees’ rights, several asylum-seekers were taken to the Tocumen airport for deportation, in spite of having legal representation, and although the deadline to appeal the resolution mandating their deportation had not yet elapsed.<sup>81</sup>

According to a governmental report, all foreigners that cannot show valid documentation to prove their legal status are taken to hostels administered by the National Bureau of Immigration and Naturalization; these hostels are often in a state of disrepair and lack sufficient space.<sup>82</sup>

#### **Questions regarding article 13:**

1. Why does Panama, in spite of being a state party to the ICCPR, continue to systematically violate the principle of non-refoulement?
2. What steps, if any, has Panama taken to protect the rights of asylum-seekers? Has Panama set forth detailed procedures to govern the deportation process? How many signatures and from which authorities are required for a valid deportation order?

#### **RECOMMENDATIONS ARTICLE 13:**

1. Provide training to both police and immigration officers on the rights of asylum seekers under international law, including the right to non-refoulement.

<sup>76</sup> For example, the state of Panama announced its commitment to voluntary repatriations to the Inter-American Commission on Human Rights.

<sup>77</sup> See *supra* note 13.

<sup>78</sup> Bethancourt, Grisél. *A long and bitter night (Una larga y amarga noche)*. Diario El Panamá América. September 17 200.6. Available at [http://www.pa-digital.com.pa/archivo/nacion-interna.php?story\\_id=568808](http://www.pa-digital.com.pa/archivo/nacion-interna.php?story_id=568808); Casado, Luis. *Workers, espionage and who will pay the price of a slice of watermelon? (Trabajadores, espionaje y ¿quién pagará el precio de la porción de sandía?)* El Mercurio Digital, February 24, 2008. Available at <http://elmercuriodigital.es/content/view/7592/40/>.

<sup>79</sup> Comisión de Justicia y Paz, Human Rights Report, 2005

<sup>80</sup> Article 16, 1960 Decree (**Artículo Decreto 16 de 1960**).

<sup>81</sup> Case of the Comisión de Justicia y Paz, 2006

<sup>82</sup> State of Panama official country report CCPR/C/PAN/3 August 29, 2007, at 68

2. Institute monitoring mechanisms within the Commission on Refugee Eligibility (Comisión de Eligibilidad de Refugiados) to prevent illegal conduct. In particular, these mechanisms should investigate allegations of corruption and complicity between migration officers and ONPAR in the detention and subsequent processing of asylum seekers.

#### **Article 14 Right to a fair trial**

The government of Panama continues to violate a detainee's fundamental right to a fair trial set forth in Article 14. Although Article 14.3(c) establishes the right of an individual to be "tried without undue delay," Panama's judicial system—in which each tribunal receives an average of 100 new cases a month—is extremely backlogged.<sup>83</sup> This backlog results in part from the government's excessive reliance on preventative detention: in a large number of cases, preliminary investigations have shown that detention was premised on inadequate and insufficient evidence. As a result, sentences for summary judgment are issued in an average of 6 months, much later than the maximum time of 4 months allotted by Panama's own Judicial Code, and defeating the purpose of a remedy designed to provide speedy relief.<sup>84</sup>

The right to be presumed innocent until proven guilty is a bedrock principle of Article 14. Yet, in multiple instances Panama's judicial system has violated this presumption. Further, while Article 14 sets forth the right to a hearing by a competent, independent and impartial tribunal, Panamanian judges fulfill a multiplicity of conflicting functions that undermine such required independence and impartiality.

Victims have limited access to justice. In practice, the justice system discriminates against individuals in a low socio-economic bracket or who suffer from poor health.<sup>85</sup>

#### **QUESTIONS ARTICLE 14:**

1. Has the government put in place mechanisms to monitor and publicize its level of commitment to improve the judicial system?
2. Are there any governmental programs that seek to foster cooperation between civil society and the judiciary? What steps will the government of Panama take to ensure that victims' rights are given due consideration and priority, and that former General Noriega is returned to Panama to serve his sentence for crimes committed in Panamanian territory?

#### **RECOMMENDATIONS ARTICLE 14:**

1. Carry out required judicial reforms to comply with fundamental Article 14 guarantees, and build a judicial system that respects both victims' and defendants' rights.
2. Establish monitoring mechanisms to ensure due process guarantees, including through regular audits with civil society participation.
3. Fulfill commitments set forth in the State Covenant for Justice ("Pacto de Estado por la Justicia.")
4. Take the required diplomatic steps to ensure Noriega returns to Panama to face trial for crimes against humanity perpetrated in Panamanian soil.

#### **Article 17 Right to privacy**

Although a recent Supreme Court decision established that the Justice Department could not authorize wiretappings absent a judicial warrant, several lines of evidence indicate that such practices have not abated, but rather, continue with relative impunity. There have been multiple

<sup>83</sup> Alianza Ciudadana Pro Justicia, Second Citizen Survey of Criminal Justice, Panama 2007.

<sup>84</sup> In their second audit, the Pro-Justice Citizens' League (Alianza Ciudadana Pro Justicia) revealed that the Justice Department and the Judicial Branch quoted widely divergent figures of 91 days and 6.3 months, respectively, when asked about the duration of summary judgment proceedings.

<sup>85</sup> State of Panama official country report CCPR/C/PAN/3 August 29, 2007, at 103

allegations that security agencies routinely listen into conversations amongst opposition party members, human rights activists, and public defenders. These activities take place without a warrant, and outside the scope of any on-going police investigation; they often politically motivated and carried out as part of clandestine operations, unauthorized by either the Justice Department or the Judicial Branch.

In this context, a proposed governmental program to install video cameras in public spaces with the alleged purpose of guaranteeing public security is particularly worrisome. The government has not disclosed which criteria, if any, will be used to determine their location, creating serious doubts that these cameras would in fact serve to increase security and raising suspicions that they would instead be used to further intrude into citizens' right to privacy.<sup>86</sup>

#### **QUESTIONS ARTICLE 17:**

1. Under which legal authority, if any, are security agencies allowed to wiretap? Who authorizes these wiretappings, and what type of criteria are used to identify targets? Are there time limits to wiretapping? Which legal authority, if any, authorizes the installation of video cameras in public places? Would this type of surveillance, as well as any information thus obtained, be subject to judicial oversight? What are the legal recourses available to injured parties to access information obtained via wiretapping or video surveillance, or to request that it be deleted? Is the government liable for the illegitimate release of information so obtained?

#### **RECOMMENDATIONS ARTICLE 17:**

1. Issue a full report describing the extent of the wiretapping program and detailing its impact on the affected parties' privacy and freedom of expression.
2. Take all available measures to protect against the release of information gathered through the wire-tapping program.

### **Article 18**

#### **Right to freedom of thought, conscience and religion**

Article 18 guarantees everyone's right to "manifest his religion or belief in worship, observance, practice and teaching," protects against religious discrimination, and binds State parties to "undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." Yet, the Ombudsman's Office has received several complaints that official authorities in the Department of Education, the Penitentiary System and some judicial venues have violated these rights.<sup>87</sup>

In particular, complaint number 341-04 against the Penitentiary System alleged that prison guards had desecrated a detainee's Tora and taunted him because of his religious beliefs; the penitentiary system had also failed to respect the detainee's religious dietary requirements. Further, in case number 2018-05, petitioners alleged they were denied custody of their 2-year-old child for belonging to the Rastafari religion. Other complaints similarly allege discrimination against Rastafarian followers, including orders to public high-school students to cut their hair, although dreadlocks constitutes a traditional expression of the Rastafari religion.<sup>88</sup>

#### **QUESTIONS ARTICLE 18**

Does the government have a particular policy or strategy to educate public officers, as well as the public at large, on religious tolerance, in particular with regards to minority religions and traditions? Which regulations, if any, mandate private institutions, and in particular religious educational institutions, to be tolerant of other faiths?

<sup>86</sup> See, e.g., Carlos Estrada Aguilar "Martinelli: I am under surveillance" (Martinelli: me vigilan") *Diario La Crítica* October 19, 2007.

<sup>87</sup> State of Panama official country report CCPR/C/PAN/3 August 29, 2007, at 158

<sup>88</sup> Bureau of Democracy, Human Rights and Labor. Country Report on Human Rights Practice: Panama, 2006. US Department of State. Marzo, 2007. URL: < <http://www.state.gov/g/drl/rls/hrrpt/2006/78900.htm>>

**Article 19**  
**Right to freedom of opinion and expression**

**Article 19, paragraph 2 states that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”**

**A. Censorship of the III National Human Development Report issued by the UN Development Programme (UNDP):** Since 2002, the UNDP and the Department of the Treasury have worked together to produce biannual human development reports. Each report focuses on a different theme and is based on consultations with, and the participation of, wide sections of the population.<sup>89</sup>

Yet, the State of Panama has vetoed the publication of this joint report, without providing an official justification. Several possible explanations to the government’s stance have been proposed, including (1) that the report highlighted the popular discontent surrounding the country’s sorely unequal distribution of economic resources, in spite of Panama’s current economic prosperity;<sup>90</sup> (2) that the report, which focused on public institutions, suggested that Panama’s public institutions were in a general state of disarray by criticizing the virtual absence of public service careers, the influence of clientilism in the assignment of public positions, and the overall inefficiency of the country’s justice system; (3) that the government considered the report unreliable, because it was based in part on interviews with civil society actors critical of governmental policies.

Regardless of the reasons for this delay, the fact remains that a year and a half after its completion, the report remains inaccessible, and its contents unknown.<sup>91</sup>

**A. Criminal sanctions for slander and libel :** Although Panama has taken some steps to decriminalize acts related to an individual’s freedom of expression, slander and libel are still criminal offenses under Panama’s Penal Code. The new Penal Code, which will take effect on May 23, 2008, codifies these offenses in articles 189 and 190, leaving unchanged from the previous Code the severity of the punishment. Article 189 states that “whomever harms the dignity, honor or decorum of another, either in writing or through other means, will be sanctioned with a 60 to 120 days fine.” Article 190 establishes that “whomever falsely attributes to another the commission of a punishable act, will be sanctioned with a 90 to 180 days fine.”

**B. The Case of Maribel Cuervo de Paredes:** Both the TV channel FETV and the newspaper “La Prensa,” refused to renew Panamanian journalist Maribel Cuervo de Paredes’s employment contract, at the same time that her opposition to the enlargement of the Panamal Canal and to proposed amendments to the Social Security Statute were made public—raising suspicions that these incidents were in fact linked. Yet, neither the Ombudsman’s Office, nor other governmental agencies have called for investigations into these events.<sup>92</sup>

**C. The Case of Blas Julio Rodríguez:** On Sunday, September 24, 2006 at 7:30 AM, Journalist Blas Julio Rodríguez was kidnapped by four individuals dressed in police uniform.<sup>93</sup> His kidnappers beat, insulted and denigrated him. They additionally admonished him to stop his public campaign against the enlargement of the Panama Canal (which prompted the public to

<sup>89</sup> [http://www.undp.org.pa/portal/lang\\_es/tabID\\_3514/DesktopDefault.aspx](http://www.undp.org.pa/portal/lang_es/tabID_3514/DesktopDefault.aspx)

<sup>90</sup> According to UN statistics, Panama is second only to Brasil in its unequal distribution of economic resources amongst Latin American countries, and occupies fifth place worldwide.

<sup>91</sup> See, generally I. ROBERTO EISENMANN, JR. *Covering the sun with one finger: A vital report is censured (Tapar el sol con un dedo: Un vital informe es censurado)* <http://mensual.prensa.com/mensual/contenido/2008/02/22/hoy/opinion/1272509.html>

<sup>92</sup> Boletín Panamá Profundo

[http://www.panamaprofundo.org/boletin/canaldepanama/maribel\\_cuervo\\_paredes1.htm](http://www.panamaprofundo.org/boletin/canaldepanama/maribel_cuervo_paredes1.htm)

<sup>93</sup> Kidnappers were wearing uniforms belonging to the Technico-Judicial Police (“Policía Técnica Judicial”), an auxiliary arm of the Justice Department and the Judicial Branch.

vote “No” in an upcoming referendum), and to warn lawyer and journalist Alexis Javier Sinclair Padilla and journalist Maribel Cuervo de Paredes, all vocal opponents of the enlargement project, to do the same.<sup>94</sup>

**D. Lack of civil society participation in country progress reports.** The government has consistently ignored not only civil society’s continued calls to be included in the consultation and drafting phases of the periodic reports, but also civil society participation directives issued by the Office of the High Commissioner on Human Rights, and discussed with 60 public officials at a meeting took place on June, 2006. In fact, civil society only learned of the contents of the report after the UN Civil and Political Rights Committee posted it on its website.

**E. Violation of AHMNP’s right to freedom of expression:** AHMNP, a non-governmental organization whose goal is to promote and defend the rights of gay, lesbian, bisexual, and transgendered individuals, has been subject to various forms of governmental discrimination. For several years, the government refused to recognize them as a legitimate civic association, alleging AHMNP constituted a danger to morality, public order and good manners. More recently, the General Directorate of Industrial Property (“Dirección General de la Propiedad Industrial, DIGERPI) denied their request to register “Panama Gay Pride” as a trademark under Class 41 of the Nice Agreement. While the petition could conceivably have been denied under national trademark law 35, it is telling that the DIGERPI denied it because it constituted a danger to morality and public order. These grounds for denial are not only incompatible with the policy principles underlying Class 41 patents, which cover “Education; providing of training; entertainment; sporting and cultural activities,” and aim to facilitate the diffusion of cultural values, but also violate AHMNP’s right to non-discrimination, freedom of association, equality under the law and property rights.

**F. Limited journalistic access to the militarized zone Chaco la Pava**  
On January 2, 2008 police forces denied three journalists access to the Chaco la Pava region. These journalists sought to cover reports of the increased militarization of the Ngobe indigenous communities of Río Changuinola in protest against the projected construction of the hydroelectric plant “Chan-75” on their lands. Although the police alleged that access was restricted because of a recent landslide, fifteen minutes after the journalists were turned away, a police vehicle was seen speeding through the supposedly blockaded road, bringing into question the veracity of the police’s statements.

#### **QUESTIONS ARTICLE 19:**

1. **Censorship of the III National Human Development Report issued by the UN Development Programme (UNDP):** Why has the State of Panama refused to publish this report? How is this action different from censorship? Is the State taking any measures to remedy this situation?
2. **Lack of civil society participation in country progress reports:** Can the state provide an explanation to the lack of civil society participation in the preparation of country progress reports, even though it was well aware of the directives issued by the Office of the High Commissioner on Human Rights?
3. **Violation of AHMNP’s right to freedom of expression:** Will the government allow AHMNP to register their trademark, as well as other trademarks they may request in the future, with the goal of advertising their organization’s activities and ideas?
4. **Limited journalistic access to the militarized zone Chaco la Pava:** Why did the government restrict access to this alleged militarized region? Can the government explain why the police alleged a landslide had taken place when future police actions revealed the highway was indeed safe?

<sup>94</sup> Equipo Nizkor. Gilma Camargo, Panamá, September 28, 2006.  
<http://www.derechos.org/nizkor/panama/doc/blas.html>

**RECOMMENDATIONS ARTICLE 19:**

5. **Censorship of the III National Human Development Report issued by the UN Development Programme (UNDP):** Allow the publication and dissemination of the III National Human Development Report.
6. **Lack of civil society participation in country progress reports:** Establish a dialogue with civil society organizations about the human rights situation in Panama, and collaborate towards creating a permanent human rights monitoring system.
7. **Violation of AHMNP's right to freedom of expression:** Allow AHMNP to register their trademark and develop human rights policies based on non-discrimination, respect, and equality under law for all minority groups.
8. **Limited journalistic access to the militarized zone Chaco la Pava:**
  - a. Request that the National Police provide information about this incident and investigate and punish those responsible, according to the applicable Law on Police Responsibility ("Ley de Responsabilidad Policial")
  - b. Request that the Ombudsman's Office investigate this incident and morally condemn the National Police's behavior in obstructing access to information.
  - c. Request that the General Attorney's Office and the Solicitor General's Office investigate this incident and seek punishment for those responsible.

**Article 21****The right of peaceful assembly**

**A. Repression of the labor movement:** Over the past three years, the State of Panama has often resorted to brutal repression to quell labor demonstrations; more recently, efforts to suppress labor organizing have only intensified, with 2008 marking a year of particularly violent repression.

In 2005, and amidst protests against proposed reforms to the Labor Code, two union members perished. Two years later, in August 2007, demonstrations organized by the Construction Workers' Union ("Sindicato Único de Trabajadores de la Construcción, SUNTRACS) resulted in the deaths of two workers, Osvaldo Pérez and Luigi Argüelles.

The year 2008 witnessed particularly violent episodes of governmental repression. The week of February 12-15, 2008, SUNTRACS organized national protests against the promulgation of new health and security regulations for the construction industry. These demonstrations elicited a violent governmental response, which has been documented widely in the national and international press and denounced by several organizations, including the Catholic Church.<sup>95</sup>

According to SUNTRACS, on February 12, 2008 the "Linces" Unit of the National Police used violent repression tactics that left two workers injured and one dead. One of the injured workers, Denis de León, received a shot in the back that perforated his intestines and caused him to lose a kidney. The other, Donaldo Pinilla, was dragged from a bus, beaten, and shot in the arm. Al Iromi Smith died from a shot in the back following a confrontation between some injured workers and the Linces Unit at the "Hugo Spadafora" Social Security Clinic.

The following day, the police arrested and disappeared Miguel Vargas, a Nicaraguan welder and SUNTRACS union member. Vargas had lived in Panama for the past 15 years, was married to a

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<sup>95</sup> See La Prensa March 13 to 16, 2008 in [www.prensa.com](http://www.prensa.com) and open letter from Genaro López to the Ombudsman's Office (*Carta abierta de Genaro López al Defensor del Pueblo*) reproduced in *Buscando Camino* Year VII, No. 172, February 24 to March 1, 2008 [http://us.f397.mail.yahoo.com/ym/ShowLetter?MsgId=5954\\_27801344\\_894643\\_2199\\_16392\\_0\\_18531\\_78\\_268\\_1214085229&Idx=1&YY=94288&y5beta=yes&y5beta=yes&inc=25&order=down&sort=date&pos=0&view=&head=&box=Inbox](http://us.f397.mail.yahoo.com/ym/ShowLetter?MsgId=5954_27801344_894643_2199_16392_0_18531_78_268_1214085229&Idx=1&YY=94288&y5beta=yes&y5beta=yes&inc=25&order=down&sort=date&pos=0&view=&head=&box=Inbox)

Panamanian and was legally employed as a welder. The police kept Vargas in solitary confinement for three days and refused to allow him to contact a lawyer or to make any phone calls—while all the while denying he had ever been arrested. Vargas was transferred from one detention center to another until he was finally deported back to Nicaragua on Saturday, February 16, 2008, with no judicial oversight or an opportunity to appeal his deportation. Vargas alleges he was tortured while in detention.

On Friday, February 15, 21-year-old Johny Smith was shot in the leg at close range. When the week was over, more than a million workers had been arrested. They were given only restricted access to lawyers and family members, and were not allowed to receive the food their families had brought for them. Demonstrators were penalized with fines of more than US\$ 60,000.

Police efforts to repress demonstrations also targeted the victims' families. For example, following the February 12 incidents, the police conducted multiple searches of the residences of Smith's mother and widow. The Major Diego de León has allegedly threatened to death Smith's brothers, as well as SINDRACS union leader Eustaquio Méndez. Family members also alleged they were mistreated when they attempted to visit the detained demonstrators.

### **B. Protest against the hydroelectric project "Chan-75."**

National police forces have forcibly displaced indigenous Ngöbe communities that reside along the Changuinola out of their traditional lands, to facilitate the building of a hydroelectric dam in the militarized territory. In the face of this increased police presence in their traditional communities, Ngöbe tribes entered several complaints with the Ombudsman's office and the Police Department's Professional Responsibility Office, all of which have gone unanswered. Indigenous communities have also brought a writ of habeas corpus to Panama's Supreme Court, which has not yet issued a decision.

Since December 2007, Ngöbe communities that reside in Charco la Pava, Valle del Rey, Guyabal y Nance de Riscó, have started peaceful demonstrations and sit-ins that involved the entire community, including children and the elderly, to protest the building of a hydroelectric dam and to demand the return of their land. Unfortunately, these demonstrations were met with threatening phone calls and house inspections—forcing several of the organizers to go into hiding.

On January 3, 2008, police forces used tear gas and batons in an indiscriminate and brutal manner to force the disbandment of the Ngöbo encampment that sought to obstruct the construction of the dam. The police arrested 54 protesters, including 13 minors, and caused several injuries to many of children and elderly that had participated in the peaceful demonstration: a baton strike broke nine-year-old Iván Abrego's nose; Ana Castillo was attacked while she was holding her three-year-old son—48 hours later she was vomiting from the pain caused by the beating. Police officers not only dismantled the encampment, they also searched for the organizers from house to house. Several of them, including teacher Ernesto López, were forced to hide in the mountains while police forces searched for them with the aid of helicopters.<sup>96</sup>

Police forces have been similarly deployed to deal with protests against hydroelectric projects in Nam indigenous territories and in the farmer-indigenous territory along the Cobre River.<sup>97</sup> Communities fear that violence between indigenous communities and police forces will soon escalate.

### **c. Repression against kuna de Bayano indigenous communities and Arraiján squatters:**

On Wednesday October 24, 2008, the police used disproportionate force to repress several

<sup>96</sup> "Testimonios de la Represión en Bocas del Toro" . Burica Press. 6 de enero de 2008. <http://burica.wordpress.com/category/hidroelectricas/>

Miranda, Itzel. "Indígenas Exigen Justicia". El Panama America, 5 de enero de 2008

<sup>97</sup> Castillo, Ney. "Represión en Río Cobre". La Prensa. 5 de enero de 2008

Santiago, Angel. "Nasos Exigen Liberación de Detenidos". La Prensa, 13 de noviembre de 2007

demonstrations by indigenous populations living in the Bayano lake area, and by squatters in the Arraiján district. The Bayano community was continuing its 30-year campaign demanding compensation for their indigenous lands, which were taken by the State of Panama for the construction of a dam. Both communities were peacefully requesting the return of their native land, where they had been born and lived—the government’s violent response, which affected children, pregnant women and the elderly, was as disproportionate as it was unnecessary.

**D. Case of the victims of diethyleneglycol poisoning and their families:** On July 19, 2007, the Institutional Protection Service, which serves to guarantee the security of the executive branch, repressed a peaceful demonstration carried out by the survivors and the family of victims of diethyleneglycol poisoning. The potent chemical, which causes Acute Renal Failure System, had contaminated some batches of medicine distributed by the Social Security Administration. Surviving victims and their families had gathered together in front of the Presidential Residence to seek answers to their demands for reparation, which had until then largely gone unheeded.<sup>98</sup>

#### **QUESTIONS ARTICLE 21:**

**1. Repression against kuna de Bayano indigenous communities and Arraiján squatters:** Will the State carry out an investigation to determine whether the police employed excessive use and to punish those responsible? What concrete measures will be taken to provide reparations to those Bayano inhabitants whose lands were taken by the Panamanian government? Does the government have a list of the people affected by the hydroelectric project? What concrete measures will be taken to guarantee these indigenous communities have access to housing so that they can live with dignity?

#### **RECOMMENDACIONES ARTICLE 21:**

- 1. Repression against kuna de Bayano indigenous communities and Arraiján squatters**
  - a. Work with the Police Department’s Office of Professional Responsibility, with the Public Ministry, and with the Ombudsman’s Office to launch an investigation into allegations of excessive use of police force and punish all those responsible.
  - b. Relocate former Bayano residents who were displaced by the construction of the dam.
  - c. Work with the National Environmental Agency to ensure that Bayano residents receive adequate compensation from the licensing company and to guarantee that displaced communities are treated more humanely and with due respect.

### **Article 23**

#### **States obligation to protect the family.**

The State of Panama’s Political Constitution sets forth the State’s duty to protect marriage, motherhood and the family. In addition, specific labor legislation seeks to protect the rights of working mothers; in particular, article 1 of the Labor Code specifies the State has the responsibility to ensure full opportunities of employment. Yet, employers have long discriminated against working mothers, by requiring that women take pregnancy tests, and by basing hiring decisions on the results of these tests. Passage of the Law of Equality of Opportunities in June, 2002 diminished overt sexual discrimination, which was reflected in job offers that publicly required pregnancy tests, but, according to interviews with public officers in the Ministry of Labor, it will be extremely complicated to eradicate this still prevalent practice.<sup>99</sup>

The State has been complicit in these negative social practices, by failing to act to prevent employment discrimination, thus signaling its implicit acceptance.

In the year 2000, a paternity license proposal modeled after Recommendation No. 165 from the International Labor Organization was introduced to Congress. Although, the proposal would have granted working fathers two weeks of paid rest upon the birth of a child, among other

<sup>98</sup> Diario la Crítica. Panamá 20 de Julio del 2007.

<sup>99</sup> Benson, Op cit, Anexos, Documentos de Prensa e Internet.

benefits, it failed to gather the required votes in the Legislative branch, due to opposition from the business block.<sup>100</sup> Newspaper articles published at the time also confirmed that public opinion did not support this proposal: Panamanians generally considered that fathers would not necessarily use this benefits to help their families.

#### **QUESTIONS ARTICLE 23:**

Has the State of Panama developed programs to foster responsible paternity? If it has, what is the content of these programs? Are there any effective mechanisms to prevent the discrimination of working mothers?

#### **RECOMENDACIONES ARTICLE 23:**

1. Develop, approve and implement effective legislation to promote responsible paternity practices.
2. Develop, approve and implement effective legislation that ensures employers adhere to the labor code and do not use pregnancy as a reason to exclude women from the work force.
3. Guarantee the application of the maternity protection in every labor relation, as well as the implementation of campaigns promoted by the relevant institutions regarding this protection.
4. Consider the development and implementation of paternity leave laws
5. Establish an effective and systematic workplace child-care policy.

### **Article 24 Rights of minors**

**A. Malnutrition:** At least one out of every seven Panamanian children under five years suffer from malnutrition.<sup>101</sup> Amongst indigenous people the situation is more serious, with 20% children being malnourished.<sup>102</sup> Children's growth is affected by poverty and the lack of maternal lactation.<sup>103</sup> In 2005, deaths from malnutrition for children one-year-old and younger reached a rate of 0.4% for every 1,000 live births.<sup>104</sup> This situation has only worsened since then. According to 2007 statistics, 70% of the children in the *Comarca Ngöbe Buglé*, one of the indigenous areas most affected by this problem, suffered from malnutrition.<sup>105</sup> According to a UNICEF 2007 report, Panama is amongst the countries that least progress have achieved regarding this problem, along with countries such as South Africa, Comoros, Irak, Yemen, Sudan, Burkina Faso, and Cambodia.<sup>106</sup> This is especially concerning Panama's recent and continuous economic growth.

According to the last Panama Living Standards Survey (*Encuesta de niveles de Vida*) of 2003, 20.6% of children under five-years-old suffer from chronic malnutrition, which is

<sup>100</sup> Turner, Anayansi. "Women's work and international labor norms" ("**El trabajo de la mujer y las normas internacionales del trabajo.**") Unpublished manuscript, Panamá, 2004, at 17

<sup>101</sup> Elizabeth González, *Uno de cada siete infantes está desnutrido*, El Panamá América, December 12, 2006, available at: [http://www.pa-digital.com.pa/archivo/nacion-interna.php?story\\_id=581763](http://www.pa-digital.com.pa/archivo/nacion-interna.php?story_id=581763) (visited on March 15, 2008). See also Radio La Primerísimo, *Alta tasa de desnutrición infantil en Panamá*, available at: <http://www.radiolaprimerisima.com/noticias/7298> (visited on March 15, 2008).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Cifras y programas alimentarios del Ministerio de Salud*, La Prensa, January 2, 2007.

<sup>106</sup> "Fondo de Naciones Unidas para la Infancia (UNICEF) denunció hoy que la desnutrición se mantiene como una epidemia mundial que contribuye a más de la mitad de todas las muertes infantiles, que superan 5,6 millones anuales", en <http://www.prensalatina.com.mx/article.asp?ID=%7B4C7C1BB7-18DE-4E80-ABD8-679D13E93194%7D>

characteristically expressed in insufficient height in relation to age.<sup>107</sup> Moreover, 6.8% of children were underweight for their age, a condition which is known as ponderal insufficiency, and 1.3% suffered from acute malnutrition, which is characterized by low weight in relation to height.<sup>108</sup>

According to information provided by Panamanian newspaper *La Prensa* in 2007, José De León, a nutritionist at the Minister of Health, explained that out of the 70% of children who are malnourished in the *Comarca Ngöbe Buglé*, 23% of cases are of slight malnutrition, which refers to the condition of children who are underweight.<sup>109</sup> De León added that the cases of severe malnutrition are under 15%, which represent acceptable levels for the Ministry of Health.<sup>110</sup>

Finally, it is worth noting that, according to statements given by the Regional Director of the UN World Food Program, Zoraida Mesa, El Salvador, Guatemala, Honduras, Nicaragua, and Panama will not be able to achieve the UN millennium goal of reducing hunger by half for the year 2015 if the current situation in the region continues.<sup>111</sup>

**B. Mistreatment of children and adolescents:** Mistreatment of minors is a crime in Panama.<sup>112</sup> However, despite this and the fact that Panama ratified the Convention on the Rights of the Child, the idea still persists that the minor is the property of the adult who acts as his or her guardian and thus children are not seen as subjects of rights. For this reason, there are high rates of violence or mistreatment of children. Especially salient is mistreatment at the hands of family members or people who are close to the child. At another level, a significant part of Panamanian society tends to blame youth delinquency on laws that attempt to benefit children. This shows that the State of Panama has done little to educate both minors and youth about the rights of children.

Statistics show that there were 5,213 cases regarding protection of children and adolescents in children's courts, of which 3,565 (68.4%) were cases registered for the first time.<sup>113</sup> Of the total of cases, 54.7% (2,853) were girls under 18, 43.2% (2,254) boys under 18 and 2% (106) were "not specified."<sup>114</sup> The biggest number of cases correspond to those involving children between one and five-years-old, with 809 cases, and 15 and 16-years-old, with 518 and 433 respectively.

The Ministry of Social Development, through the National Directorate of Children and Adolescents, does not have programs that develop public policies in the area of prevention, attention to victims, education and monitoring of mistreatment cases. Although a bill on the Integral Protection of Children and Adolescents exists, it still does not clearly develop the State's responsibility and instead seems to transfer part of this responsibility to civil society without providing it with the appropriate funds. It is also problematic that neither the Ministry of Social Development nor the Judiciary Branch (Jurisdiction of Children and Adolescence) keep data that would allow to prioritize the issues related to mistreatment of children and youth in Panama.

In 2005, a hotline was created to receive complaints about mistreatment of children, which had an advisory board constituted by, among others, the Ministry of Health, the Police, the Red Cross, the Children's Hospital, and children's NGOs. However, in September of that year, in part due to a change in the head of the Ministry, this hotline started losing its ability to rapidly intervene and instead has been transformed into a hotline of general advice and consultation for children and also women, elderly, and others.

<sup>107</sup> Encuesta de Niveles de Vida de 2003, Ministerio de Economía y Finanzas. Marzo, 2006.

<sup>108</sup> *Id.*

<sup>109</sup> *Cifras y programas alimentarios del Ministerio de Salud*, *La Prensa*, January 2, 2007.

<sup>110</sup> *Id.*

<sup>111</sup> [www.nutra.com](http://www.nutra.com) en **Entre avances y retrocesos**. Estudio de la situación de los derechos humanos de la niñez y la adolescencia en Centroamérica. 1998-2005. Red para la Infancia y la Adolescencia del El Salvador, El Salvador 2005.

<sup>112</sup> Panamanian Criminal Code.

<sup>113</sup> Judiciary Branch. **Juzgados de Niñez y Adolescencia. Centro de Estadísticas Judiciales (Children and adolescents courts, Center of Judicial Statistics)**. Panamá, 2005.

<sup>114</sup> *Id.*

**C. Penal Regime of Adolescents:** In 1999, the Penal Regime of Adolescents was established by law No. 40. The law established that the maximum penalty for serious crimes was five years. In 2003, the law was amended to increase this penalty to seven years and in 2007 it was amended again to increase it to ten. The 2007 amendments also transferred the Institute of Interdisciplinary Studies (*Instituto de Estudios Interdisciplinarios*) to the Ministry of Government and Justice. This Institute oversees the implementation and execution of sanctions imposed to youth in conflict with the law and also administers the youth centers of custody and rehabilitation. This recent transfer of the Institute is especially concerning because the Ministry of Government and Justice, which also oversees the National Police and the Penitentiary System, does not have a vision of specialized treatment for adolescents in conflict with the law. This is problematic because the Ministry of Social Development, which is the governing entity regarding children's and adolescents' issues in the country, has decreased involvement regarding adolescents in conflict with the law. The new developments regarding the penal regime of adolescents represent a step back in the area of the rights of children in Panama.

**D. Children who have been abandoned or institutionalized:** The situation of abandoned children in Panama is concerning not only because the number of cases of institutionalized children but also because of the poor response provided by administrative and judicial authorities. A child who survives a situation of abandonment must sometimes wait many years, which amounts to an average of three and a half years in the best case scenario, for his or her administrative or judicial situation to be resolved. This constitutes violations such as not being registered in the Civil Registry and not forming part of a biological or adoptive family.

Since two years ago, the Ministry of Social Development has tried to implement a policy of desinstitutionalization of children. However, due to the inability to provide monitoring of the families in which children were mistreated in the first place, the phenomenon of mistreatment and abandonment repeats itself. The lack of personnel to work with the family as well as the lack of improvement of living conditions, access to health, education, and adequate housing result in situations in which situations of mistreatment are repeated and with more intensity.

The process of adoption, which is a means of restoring an abandoned child's right to a family, is ineffective in Panama. A child can remain many years without his or her administrative process being resolved. There is also little transparency in the process. This situation will likely get accentuated if the current Bill of Protection of Children and Adolescents becomes law. This bill establishes that adoption will only take place through the administrative means and not through the court system, which basically places the power of choosing an adopted child and an adoptive couple in the hands of an authority that is chosen politically every five years.

**D. Child labor:** A comparative analysis of the 2004 and 2005 Household Surveys reveals that the economically active population (EAP) increased by 5,523 with relation to people between 10 and 17-years-old. The age range that increased significantly was that between 10 and 14, with 5,094 people. Males increased by 4,892 and they remain the sex with the most participation. The working population between 10 and 17-years-old increased from 43,199 to 51,051 people and for the population between 10 and 14 it increased by a total of 5,589. The children and adolescents between ages of 10 and 17 who were employed were 14,194. Of these, 50% works 35 hours or more per week and those who worked 40 hours or more were 6,530. The total of the EAP between 10 and 17 years-old that is involved in activities classified as the worst forms of child labor is 52,767, which represents an increase within the group of minors who live at the margin of legal parameters and controls.

**E. Education and Health<sup>115</sup>:** In the areas of health and education, there are radical and increasing inequalities between the urban populations and the rural and indigenous ones. These differences and the fact that the cost of the basic needs basket has increased by 23% result in an impoverished population with little access to health and education. Within this

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<sup>115</sup> All of the data in this section comes from the Living Standards Survey of 2003, published by the Ministry of Economy and Finance. March, 2006.

population, the most vulnerable group is that of children and adolescents. Although the State has started a program called "Network of Opportunities" (*Red de Oportunidades*), to this date its impact has been insufficient. Moreover, there have been complaints that political criteria may be influencing the selection of the beneficiaries of this program.

The following statistics summarize the access to education according to the different levels:

- 50% of coverage in pre-school level.
- 94.2% of coverage in elementary school level (1<sup>st</sup> thru 6<sup>th</sup> grades).
- 70.2% of coverage in the junior high and high school levels (7<sup>th</sup> thru 12<sup>th</sup> grades).

In terms of health services, these are measured by the physical availability of the service (distance) and the capacity of the users to pay for their services. As to the physical availability of the service, Panama's health services are fairly accessible, since 93% of the users employ about an hour or less to go from home to a center of medical attention (this is the accessibility criteria used by the World Health Organization). In the urban area, 1.3% of the population does not have access to health services and in the rural area, 13% does not have access. Based on poverty level, 12% of the poor population, 16% of the population living in extreme poverty, and 3% of the non-poor population does not have access to health services.

Of the people who suffered health problems and did not seek assistance, 18% did not do so for lack of resources to cover costs of transportation and/or other services. In particular, the figure was 9.7% in the rural area and 26% in the urban areas. In terms of economic resources, 8.8% of the non-poor, 20% of the poor and 36% of the extreme poor did not seek assistance for lack of resources. Overall, more than one fifth of the people who suffered health problems did not seek assistance for economic reasons or of physical distance.

Regarding access to water, the total population with access to potable water in 1997 was 88.5% and in 2003 it was 90.2%. In the indigenous areas, access increased from 44% in 1997 to 57.2% in 2003. In the rural areas, it increased from 81.9% in 1997 to 85.7% in 2003, and in the urban area access decreased from 98.9% in 1997 to 96.7% in 2003.

#### **QUESTIONS ARTICLE 24:**

1. Does the Ministry of Health consider that levels of 15% of malnutrition are acceptable? If so, why does the State of Panama consider malnutrition acceptable? If not, what is the State doing to eliminate malnutrition?
2. Is there official data regarding deaths of children due to malnutrition?
3. What governmental programs are there to fight malnutrition?
4. Are there governmental programs that seek to educate the general population in terms of the rights of children and the importance of knowing the different norms that protect them?

#### **SUGGESTED RECOMMENDATIONS ARTICLE 24**

1. Assign the necessary resources to establish and implement programs designed to reduce levels malnutrition that are considered "acceptable," with the hope of reaching the Millennium goals.
2. Establish statistical tools to collect data regarding the situation of children's malnutrition, including related deaths, and make this information public.
3. Create programs designed to reduce mistreatment of children and adolescents that involve families and schools.
4. Investigate and penalize the violence suffered by children and adolescents who are confined to protection institutions.

#### **Article 25**

#### **Political rights including the right to vote, the right to be elected, and the right to have access to public service on general terms of equality:**

In Panama, there are various situations affecting the enjoyment and exercise of the population's political rights:

**A. Right to vote of people deprived of liberty:** Until recently, legislation did not allow for people deprived of liberty in pre-trial detention (almost 7,000 of the 11,000 total of people deprived of liberty) to vote. This legislation has been repealed. However, the necessary regulations to allow detainees to vote are not yet effective. Moreover, we consider that there is a flaw in that regulation since the people deprived of liberty in pre-trial detention will only be able to vote for President because the place where the prison is located has not been equated to domicile for terms of voting for other elected officials.

Given the dramatic conditions in which the penitentiary population lives and the small impact that the vote of detainees will have in the total votes for President, it becomes especially important that they could help choose other officials such as legislators, mayors, and representatives. In spite of this, the State has refused to validate domicile for the persons deprived of liberty while it has done so for political reasons that are less altruistic, such as being flexible in terms of the domicile for legislators to allow their election in an alternative circuit when it becomes clear that the circuit to which the legislator has ties will not elect him or her.

**B. Vote for people who are hospitalized:** There are no mechanisms to allow people who are hospitalized in the day of elections to vote.

**C. High threshold for party inscription:** There is a very high threshold for party inscription, around 60,000 or more signatures are necessary in order to register a political party, which constitutes about 4% of the total of valid votes cast in the last elections.<sup>116</sup> This represents a great obstacle for political minorities and furthers the hegemony of the traditional parties in electoral participation, public affairs, and in the construction of public opinion.

**D. Access to government jobs based on party clientilism:** According to an Inter-American Development Bank report, Panama and El Salvador are the countries with the poorest institutionalization in Latin America. In part this is due because access to public posts largely depend on party clientilism. There are few professional careers in the public sector that are respected by political parties in power. As evidence of this, the secretary of the National Council of Transparency Against Corruption (*Consejo Nacional de Transparencia contra la Corrupción*), Alma Montenegro de Fletcher, who was member of the political power currently in power, has stated that "In Panama there is a clientilist system in which the political variables determine who gets a job and maintains it."<sup>117</sup> This constitutes a violation of Article 25 since it means that not all Panamanian citizens have the same access to public service opportunities.

**E. Election of religious ministers to public positions:** The separation of church and State in Panama has been undermined by the election of religious ministers to positions in the National assembly despite the existence of the following article in the Constitution:

**Article 45:** Religious ministers, aside from the functions inherent in their mission, can only hold public positions that relate to social assistance, education, or scientific investigation.

Currently there are four legislators who are religious (Christian) ministers in the National Assembly. They have systematically blurred the lines separating the State from the churches, which can represent a risk to freedom of religion, conscience, and expression as well as to the principles of non-discrimination and equality before the law and other basic rights and freedoms.

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<sup>116</sup> According to statistics of the Tribunal Electoral (*Electoral Tribunal*), available at: <http://www.tribunal-electoral.gob.pa/elecciones/elecciones-2004/padron-final.html>.

<sup>117</sup> Santiago Cumbreira, *Montenegro de Fletcher fustiga contra el nepotismo*, El Panamá América, April 25, 2007.

**F. Unequal quota of women participation in government:** Finally, it is worth mentioning that despite important reforms, women still do not participate in government in equal conditions as to men.

**G. General civic participation:** Citizen involvement in the definition and execution of public policies is neither permanent nor structured.<sup>118</sup> According to the evaluation done by the Process of National Agreement of Panama in 2007 (*Proceso de Concertación Nacional*), the lack of citizen involvement in the country affects the political process negatively, disrupts the efficient use of public funds, and marginalizes citizens politically and socially.

#### **PREGUNTAS ARTÍCULO 25:**

- 1. Right to vote for people deprived of liberty:** Will the government issue the necessary regulations to allow the people deprived of liberty to vote? Will they be allowed to vote for all elected offices, not only for President? Please provide examples of specific measures that will be adopted to achieve this.
- 2. Vote for people who are hospitalized:** Will people who are hospitalized on the day of the elections be allowed to vote? Please provide examples of specific measures that will be adopted to achieve this.
- 3. High threshold for party inscription:** Will the threshold for party inscription be reduced to allow for higher and more diverse citizen participation? Please provide examples of specific measures that will be adopted to achieve this.
- 4. Access to government jobs based on party clientilism:** Does the government have plans to introduce a new law that establishes professional career tracks in the government and which results from a consensus between political parties and civil society?
- 5. Election of religious ministers to public positions:** Will the elections of religious ministers for the position of legislators in the National Assembly be allowed to continue despite the prohibition in national legislation and the risk that it represents for the separation between the State and churches. Please provide examples of specific measures that will be adopted to achieve this.
- 6. Unequal quota of women participation in government:** Will the equal participation of women and men in government be allowed? Please provide examples of specific measures that will be adopted to achieve this.
- 7. Civic participation:** Does the state have plans to implement mechanisms to monitor and evaluate the quality of the norms and practices regarding civic participation in the near future? Is there a public authority that is responsible for these policies and does it make its findings and plans public?

#### **RECOMENDACIONES ARTÍCULO 25:**

- 1. Right to vote for people deprived of liberty:**
  - i. Implement the regulation of the law that allows people deprived of liberty to vote.
- 2. Voto de las personas hospitalizadas, y en el extranjero: Vote of people who are hospitalized:**
  - i. Request the Electoral Tribunal to mobilize human, economic, and technical resources to hospitals to allow for people who are hospitalized to vote there.
- 3. Access to government jobs based on party affiliation :**
  - i. The State of Panama should implement the law of administrative career in all of its public dependencies. In practice, the Tribunal for Appeals of the General Directorate of the Administrative Career should be an unbiased entity and an increase in state resources should allow it to decide timely appeals of public officials who have been removed without justification.
- 4. Election of religious ministers to public positions:**
  - i. The Electoral Tribunal should establish mechanisms of control to ensure that political party candidates have the adequate qualifications to run for public office. It should also impose sanctions for those parties that violate the rules.

<sup>118</sup> Programa de las Naciones Unidas para el Desarrollo (UNDP). *Evaluación común de país, 2005, y marco de cooperación para el desarrollo, 2007 – 2011 (Common country evaluation, 2005, and framework for cooperation in development, 2007-2011)*. Sistema de las Naciones Unidas – Panamá. 2006. Pag. 31.

### **Article 26** **Equality before the law.**

The credibility of Panama's judicial system is at a particularly critical moment due to corruption scandals that have been uncovered. To address this problem, the State Commission for Justice (*Comisión de Estado por la Justicia*) was created, which developed the State Pact for Justice (*Pacto de Estado por la Justicia*). The main objective of this Pact for Justice is to achieve access to justice for all people. However, little has been achieved. For example, there has not been much progress in terms of the attention provided in the local government offices that are the first ones to hear about domestic violence cases, which are prevalent in the country. Recently, the system of penal responsibility of adolescents was reformed without there having been full implementation of the original penal regime in the first place. This system does not comply with the objective of rehabilitation established as a fundamental principle in the Panamanian penitentiary system. Additionally, there is only one department of Defense for Victims in the country, which is part of the Judiciary Branch, and only has three attorneys.

- The Barometer of the Americas, a poll published in July 2006, reveals that of 1,536 people polled, 52.10% indicates that the most serious problem in the justice system is corruption. For the common citizen, justice only happens for people with significant financial resources.
- According to the Citizen Survey of Criminal Justice elaborated by the organization *Alianza Ciudadana Pro Justicia*, there is an insufficient number of public defenders in the country.<sup>119</sup> Panama has an average of two public defenders for every 100,000 inhabitants.<sup>120</sup> Their workload is excessively high; the average of cases per public defender can be 450 cases per year.<sup>121</sup>

### **Freedom to denounce crime**

There are norms that establish the duty of the public official to denounce acts that are harmful to the state. However, in practice, an environment of mistrust discourages the civic exercise of denouncing these acts. At the end of 2004 statistics were published regarding the process through which users of public services can complain about irregular practices. These statistics reveal that at least two of every five users find that the process is complicated, lacks independence and could put one's personal security at risk.<sup>122</sup> Polls published in 2007 reveal that 57.4% of the victims of delinquent acts do not denounce the crime.<sup>123</sup> Of these, 44.3% justify their action because they think that denouncing these acts will be useless.<sup>124</sup>

### **QUESTIONS ARTICLE 26:**

1. Are there specific measures to fight corruption within the system of justice administration? Have mechanisms been implemented to monitor these results? Have mechanisms been created to promote civic participation in the fight against corruption?
2. Are there programs that provide the economic, technical, and human resources to improve the attention that people receive when they take their complaints to the justice system? Are there mechanisms that monitor the progress and results of these programs?

<sup>119</sup> Alianza Ciudadana Pro Justicia, *Segundo Audito Ciudadano de la Justicia Penal en Panamá*, Panamá 2007, p. 18.

<sup>120</sup> *Id.*

<sup>121</sup> Bureau of Democracy, Human Rights and Labor. *Country Report on Human Rights Practice: Panama, 2006*. US Department of State. Marzo, 2007. URL: < <http://www.state.gov/g/drl/rls/hrrpt/2006/78900.htm> >

<sup>122</sup> Fundación para el Desarrollo de la Libertad Ciudadana. "Propuestas para el fortalecimiento de las instituciones que previenen e investigan la corrupción en Panamá" (Proposals for the strengthening of institutions that prevent and investigate corruption in Panama). Editorial Libertad Ciudadana. Panamá, 2004. Pag, 95.

<sup>123</sup> Pérez, O. y Seligson, M. "Cultura política de la democracia en Panamá. 2006" (*Political culture of democracy in Panama*). *Proyecto de Opinión Pública de América Latina*. Panamá, enero de 2007. URL: <<http://www.alianzaprojusticia.org.pa/site/download/panama2006.pdf>>

<sup>124</sup> *Id.*

3. Are there mechanisms to protect witnesses and complainants of all kinds of crimes, but especially those that relate to the public administration?
4. How is the effectiveness of the complaints' channels measured? How is the enjoyment of citizens' rights to complain about crimes measured?
5. What is the government's assessment regarding the success of the tools available for citizens to denounce crimes?

#### **RECOMMENDATIONS ARTICLE 26:**

1. Develop and implement programs designed to fight corruption within the justice system through the education of public officials and users of the system.
2. Eliminate the normative obstacles that allow impunity of certain groups or categories of persons within the system, so that investigations and sanctions due to corruption are applied effectively and without distinctions or privileges.
3. Create systems to follow-up and monitor the effective application of ethical and disciplinary norms to public officials in the justice system.
4. Generate information to assess whether the legal conditions that protect witnesses and complainants of common crimes and against the public administration affect the level and quality of citizenship participation in the protection of public and private property.
5. Implement an effective system to channel complaints regarding the denial of the public service of selective transportation so that the problem regarding discrimination can be resolved.

#### **Article 27 Protection of minorities**

Despite the fact that the State has created several indigenous territories (*Comarcas Indígenas*), those peoples who do not have their own territory, such as the Bri-Bri and Naso communities, among others, have little jurisdictional protection since Panama has not ratified the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. An example of how these communities, made up of 5,000 Panamanian citizens, are not protected is that their right to collective land ownership has not been recognized, despite the fact that this possibility is recognized by Article 127 of the Panamanian Constitution.<sup>125</sup>

Furthermore, the State of Panama has not prevented illegal invasion of land of non-indigenous people in indigenous peoples' territory. There is no concrete measure from the government that seeks resolve and prevent the problem of illegal invasion of land. Moreover, the indigenous peoples' territory are being threatened by the megaprojects such as hydroelectric dams, mining activity, forest concessions, and tourist activities.

On the other hand, even though the Panamanian Constitution respects the ethnic identity of the indigenous communities, and that the same principles are enshrined in Law 34 of 1995— which requires the Panamanian state to offer a bilingual and intercultural education to the indigenous territories—this has not been possible in practice due to the lack of interest expressed by the state entities in charge of education. For example, in 1998 the Ministry of Education created the Technical Coordination Unit for the Execution of the Special Programs in the Indigenous Areas (Executive Decree Num. 94, May 25, 1998), which has as one of its primary functions to design, create texts, pedagogical guides, didactic resources and other support material for an intercultural bilingual education. However, this Unit lacks the level of a "National Directorate." And the intercultural bilingual education plan and the literacy campaign in the indigenous

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<sup>125</sup> Constitution of Panama, article 127: El Estado garantizará a las comunidades indígenas la reserva de las tierras necesarias y la propiedad colectiva de las mismas para el logro de su bienestar económico y social. La Ley regulará los procedimientos que deban seguirse para lograr esta finalidad y las delimitaciones correspondientes dentro de las cuales se prohíbe la apropiación privada de tierras (The State will guarantee to the indigenous people the protection of the necessary land and collective property for the achievement of the economic and social benefit. The law will regulate the procedures that should be followed towards this objective and the corresponding outer limits that mark the prohibition of the appropriation of private land.)

territories have little chance of success as long as they are not implemented together with the indigenous Congresses. On the other hand, in 2003 the government created the National Commission of Traditional Medicine, which aims to establish a regime of protection, promotion, and respect for indigenous traditional medicine, with the participation of the indigenous Traditional Congresses, Councils, or Authorities. This Commission has not yet been constituted.

#### **QUESTIONS ARTICLE 27:**

1. Why hasn't Panama adhered to Convention (No. 169) Concerning Indigenous And Tribal Peoples In Independent Countries?
2. Why hasn't the Panamanian state expressly recognized the traditional right to the collective ownership of land in the Bri-Bri and Naso Communities even though this possibility is contemplated by article 127 of the Constitution?

#### **RECOMMENDATIONS ARTICLE 27:**

1. Adhere to Convention (No. 169)
2. Bestow special status on the Bri-Bri and Naso Communities, recognizing their traditional right to the collective ownership of land, which is contemplated by article 127 of the Constitution.
3. Elevate the Technical Coordination Unit for the Execution of the Special Programs in the Indigenous Areas to the level of a "National Directorate of Intercultural Bilingual Education."
4. Develop, execute, and evaluate an intercultural bilingual education plan and the literacy campaign in the indigenous territories, in coordination with the Indigenous Congresses.

#### **BRIEF CONSIDERATIONS REGARDING OTHER CONDUCT THAT AFFECTS HUMAN RIGHTS**

Treating corruption as an indicator of the partiality, subjectivity, and dependence of Panama's public institutions when making public decisions, the Panamanian State marginalizes socially, economically, and politically the majority of the citizens that it must protect, specially when they are poorly organized, lack strategic alliances with public officials and/or lack economic resources.

Presently, the public distrusts their public institutions since it believes that the vast majority of its decisions are not made for the public interest. For example, all recent opinion polls (periodic polls by Dichter & Neira,<sup>126</sup> the Corruption Perception Index<sup>127</sup> and Global Corruption Barometer, both by Transparency International; Citizen Survey of Criminal Justice by the *Alianza Ciudadana Pro Justicia*, the reports prepared by Americas' Barometer<sup>128</sup>, and the opinions expressed by Panamanian citizens to the local press) expose a climate of political insecurity that persists throughout Panama's democracy. This problem is also underscored by the high level of discontent that persists notwithstanding the unusually long period of economic growth experienced by Panama.

The problem of corruption was recently highlighted in *The Economist*, where the magazine criticized the unjust advantages possessed by Panamanian economic groups due to their secret ties with public officials.

It is important to emphasize that the public's perception that there is a high level of corruption in Panama is well-founded. Recently, high-level public officials had acknowledged being witnesses

<sup>126</sup> "Pulso de la Nación" Poll. Published on Monday, September 24, 2007. Insert in El Diario La Prensa. URL: <http://www.prensa.com/pulso/>.

<sup>127</sup> Transparency International. Corruption Perception Index. Transparency International Web Site. URL: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)

<sup>128</sup> PÉREZ, O. y SELIGSON, M. *Cultura Política de la Democracia en Panamá, 2006* [Political Culture of Panama's Democracy 2006]. Latin American Public Opinion Project. January, 2007. URL: <http://www.alianzaprojusticia.org.pa/site/download/panama2006.pdf?PHPSESSID=192a6c51b230c4f6a6f84a9d16da18b9>

to crimes of public corruption. Reports made by civil organizations also reveal specific instances of corruption by public officials in important posts.<sup>129</sup>

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<sup>129</sup>Alianza Ciudadana pro Justicia, *Áudito Ciudadano de la Justicia Penal en Panamá* [Citizen Survey of Criminal Justice in Panama]. Panamá, 2007. URL: <http://www.alianzaprojusticia.org.pa/site/images/archivos/audito1.pdf>

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