



**International covenant  
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**REPLIES OF THE GOVERNMENT OF PANAMA TO THE LIST OF ISSUES  
TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF  
THE THIRD PERIODIC REPORT OF PANAMA (CCPR/C/PAN/3)\***

[5 March 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of reports, the present document was not formally edited before being submitted for translation.

### ***Question 1***

Panama ratified and adopted the International Covenant on Civil and Political Rights in its entirety by virtue of Act No. 15 of 28 October 1976.

### ***Question 2***

#### **A. Measures taken**

As indicated in the reported submitted by Panama to the tenth session of the Regional Conference on Women in Latin America and the Caribbean (ECLAC), held in Quito, Ecuador, from 6 to 9 August 2007, it has not been possible to calculate the extraordinary contribution of women's unpaid domestic work to the economy in either the public or private sectors. The tasks typical of domestic work do acquire market value when performed outside the home. Basing the remuneration of domestic work on considerations of gender is discriminatory. Even though the notion of the 8-hour workday has been accepted for more than a century, thousands of women, in particular migrants from the countryside or marginalized sectors of the urban population, continue to face working days that can legally last up to 13 hours when such women stay in the homes where they work.

The Government of Panama, through the National Directorate for Women of the Ministry of Social Development, has participated in La Agenda Económica de las Mujeres (Women's Economic Agenda), a regional project, since its inception in October 2004. This project, sponsored by the Swedish International Development Cooperation Agency (SIDA), the United Nations Development Fund for Women (UNIFEM) and the United Nations Development Programme (UNDP), has undertaken research on, increased awareness of and disseminated information about the very important issue of gender and the economy.

Since 2005 studies have been carried out on:

- Gender-based occupational segregation in Panama
- The role of women in the export of non-traditional agricultural products
- The effect of development of the tourism sector on women's employment and lives
- Collective agreements and gender equity in Panama: this study recommends including occupations not traditionally covered by collective agreements (public posts, domestic work, work in the informal sector and work in non-unionized enterprises) in collective bargaining as well as including in such agreements provisions to promote equal opportunities for women in both productive and reproductive activities.

These studies have made vital contributions to the elaboration of concrete proposals and measures in the field of labour.

Pursuant to Act No. 4 on Equality of Opportunity for Women, the National Directorate for Women within the Ministry of Social Development, together with the Ministry of Labour and the Agenda Económica de las Mujeres project, have been developing activities aimed at

mainstreaming gender issues in the Ministry of Labour with the assistance of the Commission on Gender and Employment, which was established on 5 May 2007. In 2007 these efforts included a national forum on the topic “Domestic work: something to be valued and remunerated”, which was held in the context of International Domestic Work Day (22 July) in order to highlight relevant legislation and the labour rights of women domestic workers while disseminating information on and increasing awareness of domestic work.

A study entitled “The social relations underlying women’s paid domestic work” was published in 2007 by graduate students in the Sociology Department of the School of Humanities at the University of Panama.

In 2008, in order to increase awareness of the working conditions of women domestic workers, the Council of Ministers of Women’s Affairs of Central America (COMMCA), a body of the Social Integration Sub-System (SISCA) of the Central American Integration System in which Panama participates, intends to undertake a study on paid domestic work in Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama. The study will be undertaken within the framework of the Agenda Económica de las Mujeres project (UNIFEM-UNDP) with the support of the Spanish International Cooperation Agency and is designed to generate country-specific data on paid domestic work and its relationship to unpaid domestic work and the living conditions of women in Central America with a view to identifying legislative reforms and priorities in the area of public policy.

At the tenth session of the Regional Conference on Women in Latin America and the Caribbean, held in Quito, Ecuador, from 6 to 9 August 2007, Panama undertook, through the Quito Consensus, to recognize “the social and economic value of the unpaid domestic work performed by women, caregiving as a public matter which falls within the purview of States, local governments, organizations, companies and families, and the need to promote shared responsibility by women and men within the family ... [and] ... the need to evaluate and reverse the negative effects of structural adjustments on paid and unpaid work ...”.

### **B. Efforts to bring women’s salaries into line with men’s**

In Panama, as in other Latin American economies, little data is available to help understand the total contribution women’s labour, both inside and outside the home, makes to the economy, given that the economy is gender-neutral and that women’s contribution is not specifically reflected in the statistics.

One important step to bring women’s salaries into line with men’s is being taken by the National Directorate for Women during the current year; working with the United Nations Population Fund (UNFPA) and with technical support from the Agenda Económica de las Mujeres project and national and international sponsors, the Directorate will conduct a survey on time use in paid and unpaid work, with a view to increasing understanding of women’s productive and reproductive work.

During the current year the National Directorate for Women will also undertake a comparative analysis of the wage gap between men and women in the public sector.

### ***Question 3***

The current Criminal Code contains no provision requiring victims to be “chaste and virtuous” in order to file a complaint of rape. Article 216 of the Criminal Code, which define the crime of rape, states: “Any person who engages in a sexual act with a person of either sex by using his/her genital organs or other body parts or inserting an object of any kind in the genitals, mouth or anus of the victim, shall be sentenced to 3 to 10 years’ imprisonment, in the following cases:

1. If violence or threats were used;
2. If the victim was unable to resist because he/she was unconscious or incapacitated, or suffers from a mental or physical disability, or for any other reason;
3. If the victim is a detainee or a prisoner who has been placed in the custody of the perpetrator for the purposes of supervision or transfer from one location to another; and
4. If the victim is a person of either sex under the age of 14, even if none of the above conditions apply.

Article 171 of the new Criminal Code<sup>1</sup> retains these provisions.

Article 219 of the current Criminal Code, which deals with the offence of sexual relations with a minor, makes reference to women who are virgins in the following provision: “Anyone who has carnal relations with a virgin maiden over the age of 14 years but younger than 18 with her consent shall be sentenced to one to three years’ imprisonment. If the perpetrator promised to marry the victim, or is a family member, a minister of the victim’s religion, the victim’s guardian or teacher or has responsibility in any capacity for her education, care or upbringing, the penalty shall be doubled.”

This provision has been deleted from the new Criminal Code (art. 172 ff.).

### ***Question 4***

#### **A. Activities of the Truth Commission and length of its mandate**

The Truth Commission was established by Executive Decree No. 2 of 18 January 2001 in response to demands from civil society, similar to those made in many other countries, for the investigation of disappearances and extrajudicial killings that had occurred during military regimes.

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<sup>1</sup> By Act No. 14 of 18 May 2007 Panama adopted the Criminal Code, which will enter into force one year from the date of its promulgation.

The mandate of the Commission was to help shed light on violations of the fundamental human right to life, including disappearances, during the military regime that governed Panama as from 1968.

It was decided that the Truth Commission would deal with the period from 1968 to 1989. The Commission received 207 complaints of individuals killed or disappeared, individually or in groups, which were then checked for reasons including: the existence of different names for the same person, which made it difficult to verify facts; the fact that individuals who had allegedly disappeared or been killed were actually alive; the fact that complaints did not fall within the Commission's mandate. Basic information concerning the victims was usually checked against civil birth and death registries, electoral rolls and legal documents including identity and social service cards in order to reduce any margin for error, leading to the closing of 67 files and confirmation of 110 cases.

The 110 documented cases were confirmed by the Commission through investigations, statements by and interviews with witnesses and family members, searches for information and evidence obtained in the field, documentary evidence obtained both in Panama and abroad, maps, reports, forensic evidence, photographs and recordings, all of which yielded vital information about the incidents and the persons and circumstances involved.

Interviews were held to gather information on the lives of the victims, their families, survivors and the circumstances of the disappearances and deaths. The National Police cooperated in efforts to obtain detailed information about those allegedly involved and questioned former military personnel so that they might provide their version of the facts in cases of alleged human rights violations.

An anthropology department was established to provide assistance in defining the parameters of the investigations and in conducting quantitative and qualitative analyses aimed at reconstructing past events and recovering, preserving, identifying and classifying the skeletal remains found in burial sites.

In order to document identities, a *pre mortem* file on each victim was prepared, containing information on past activities, illnesses, accidents, distinguishing physical features and other information that might have left some mark on the skeletal remains.

Mitochondrial DNA analysis was performed when the individual could not be identified through an analysis of skeletal remains or when such remains were insufficient for conventional methods. The DNA analysis involved comparison with bone and saliva samples from relatives on the mother's side of the family. Thirty such saliva samples from relatives of disappeared persons were taken and sent to the ReliaGene Technologies laboratory for comparison with bone fragments collected at various sites.

Lastly, with the help of a number of agencies, more than 1,000 documents containing information that could help to clarify the incidents were declassified and/or collated.

## **B. Recommendations of the Truth Commission**

The Commission's recommendations and the Government's follow-up thereto are described below:

*Recommendation 1. Cases of human rights violations that occurred during the period under investigation for which new evidence has been brought to light by the Commission should be reopened.*

This recommendation has been followed up: under resolution No. 22 of 2 March 2005, the Office of the Procurator-General established the position of Special Investigating Officer to investigate enforced disappearances; this individual was given responsibility for reviewing the 110 cases documented by the Truth Commission, ensuring that they are followed up and reopening 15 of 17 applications.

The Procurator-General explained to the Inter-American Court of Human Rights that she had established the position in order to centralize responsibility for all investigations arising out of the Truth Commission's findings in the Public Prosecutor's Office, thereby ensuring that they were brought to trial and that all domestic remedies were exhausted so that family members could appeal to the inter-American system. She feared that if the Public Prosecutor's Office did not assume responsibility for the cases investigated by the Truth Commission all the Commission's work would have been in vain. Since the prosecutors in the ordinary criminal justice system had their own homicide and investigation caseload, it was easier to appoint, as she was empowered to do by law, a roving prosecutor who would be provided with resources to travel anywhere in the country, particularly in three of the country's four judicial districts where disappearances and deaths had occurred during the military dictatorship; it would be easier for such a prosecutor to gather information and testimony, pursue investigations and then bring the findings to the attention of the senior prosecutors, who could then ensure that such information was presented in court.<sup>2</sup>

*Recommendation 2. The families of those killed or disappeared at the hands of the military regime should be provided with appropriate moral and material compensation proportionate to their suffering.*

The Public Prosecutor's Office has ensured that many cases involving homicides that were committed during the period 1968-1989 have remained open. A case has also been brought before the Inter-American Commission on Human Rights (*Families of victims of the military dictatorship v. Panama*) by the Truth Commission itself with a view to meeting Panama's obligation to compensate the families of victims. In addition, on 27 October 2005 the Inter-American Commission on Human Rights also made a number of recommendations to the Government of Panama in connection with the Heliodoro Portugal case:

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<sup>2</sup> Procurator-General Ana Matilde Gómez, at a hearing before the Inter-American Court of Human Rights in the Heliodoro Portugal case, 29 January 2008.

- A full, impartial and effective investigation of the facts should be undertaken without delay with a view to identifying those responsible for the arbitrary and illegal detention, torture, forced disappearance and execution of Heliodoro Portugal, at all levels of decision-making and action, criminal proceedings affording all necessary legal guarantees should be brought on against those responsible and any sentences imposed by the courts should be enforced.
- A full, impartial and effective investigation should be made of any persons who have interfered with previous unsuccessful investigations and proceedings relating to the extrajudicial killing of Heliodoro Portugal with a view to determining those responsible for the lack of results and the reasons why this incident has gone unpunished.
- Appropriate compensation should be provided to Graciela de León de Rodríguez (companion of the victim and mother of his children), Patria Portugal (daughter) and Franklin Portugal (son), as the heirs of Heliodoro Portugal and for the violations of his rights, and as direct victims, taking into account both the moral and material suffering caused, of these human rights violations. To this end the members of the victim's family should be offered whatever assistance they may require to obtain specialized professional care and rehabilitation. Furthermore, each victim should have the right to select the professional who will treat him/her and the type of assistance to be offered.
- The reputation of the victim and his family should be rehabilitated by means of a public acknowledgement of the State's responsibility for the harm caused and for the grave violations that occurred. Measures should include an official tribute to be reported by the country's major media and the installation of a public plaque located in an important, heavily frequented location. All of the above should be undertaken after the surviving family members have been consulted and their consent has been obtained.
- Promote any legislative and other reforms that may be necessary to ensure the proper investigation and punishment of violations similar in nature to those cited in this report.

Panama agreed to comply with the recommendations of the Inter-American Commission on Human Rights and, accordingly:

*First and second recommendations*

The third senior prosecutor for the First Judicial District requested the Superior Court of Justice to reopen the investigation into the disappearance and death of Heliodoro Portugal in the light of new evidence implicating the G-2 units of the former National Guard.

*Third recommendation*

The General Medical Department of Santo Tomás Hospital provided a list of psychiatrists and psychologists available to provide therapy for the family members. In addition, they were referred to the Santo Tomás Hospital patient services team and to the Assistant Medical Director, who will coordinate any activities organized for family members.

In December 2006 a meeting was held in the offices of the General Medical Department attended by the Medical Director of Santo Tomás Hospital, the Department's administrative assistant, the Deputy Director for Legal and Treaty Affairs, representing the Human Rights Department of the Ministry of Foreign Affairs, Patria Portugal (daughter of Heliodoro Portugal), Franklin Portugal (son of Heliodoro Portugal) and Graciela de León de Rodríguez (companion of Heliodoro Portugal and mother of his children).

The family indicated that they wished to start with a comprehensive physical examination by a general practitioner or an internal medicine specialist followed by sessions with a psychiatrist or psychologist for rehabilitation therapy.

The Medical Director agreed to this and said that the hospital's facilities and medical and administrative staff were at the family's disposal so that members could receive any treatment they required.

An initial medical appointment was made. Follow-up was to be monitored by the General Medical Department of Santo Tomás Hospital and the Ministry of Foreign Affairs with a view to ensuring compliance with the recommendations of the Inter-American Human Rights Commission.

#### *Fourth recommendation*

In keeping with the family's wishes, the Government of Panama requested the Panama City Council to rename a street in Santa Ana district, and the Council adopted a resolution renaming C Street in that district Heliodoro Portugal Street.

#### *Fifth recommendation*

In accordance with its international obligations and in recognition of the need to adopt criminal legislation to punish reprehensible acts such as the enforced disappearance of persons, the Government of Panama has taken steps to criminalize such enforced disappearances.

Accordingly, on 15 September 2005 the Procurator-General submitted to the National Assembly a bill establishing the enforced disappearance of persons as a criminal offence with a view to its inclusion as a separate offence in the Criminal Code.

The draft Criminal Code adopted by the National Assembly classifies the crime of enforced disappearance of persons as a criminal offence.

Draft legislation authorizing the Executive to enter into agreements aimed at concluding the cases of human rights violations brought against Panama in the context of the Inter-American Human Rights System and the adoption of other provisions has likewise been submitted to the Cabinet.

Attention is drawn once again to the recommendations of the Truth Commission.



*Recommendation 3. A Special Prosecutor should be appointed to investigate human rights violations and crimes against humanity.*

A Special Investigating Officer has been assigned to these cases and coordinates with the judicial district prosecutors in whose jurisdiction such cases fall.

*Recommendation 4. The National Police Organizational Act should be revised to ensure that the command and operations of that body and any other public law enforcement agency remain under the control of the civilian authorities.*

Act No. 69 of 27 December 2007 concerning the establishment of the Judicial Investigation Department of the National Police and the transfer of the Criminology Services to the Institute of Legal and Forensic Medicine and setting out other provisions is intended to strengthen police and judicial investigation capacities in order to make them effective tools for combating crime.

This Act is the result of consultations and studies carried out by representatives of the current Administration and staff of the Public Prosecutor's Office and is aimed at creating an entity capable of conducting judicial investigations using the most advanced investigation tools under the supervision of the competent authority, in order to accommodate the expressed desire of the Panamanian people.

This new structure will be under the authority of the Public Prosecutor's Office and the judiciary, acting as a subsidiary body for the investigation of crimes, the location and preliminary detention of suspects and the gathering of evidence, and cooperating with the relevant jurisdiction in the enforcement of sentences or security measures decided by the competent authorities.

It also reallocates responsibilities currently held by the Technical Judicial Police, reassigning the Criminal Investigation, Judicial Identification and Training Departments to the National Police.

The Judicial Investigation Department carries out forensic investigations; its reports reflect scientific objectivity and as close an approximation of the material facts as possible.

These reforms have been undertaken in response to the need to adapt the working methods of the Technical Judicial Police to reflect the current nature and methods of domestic and transnational organized crime and terrorism, which pose a threat to the life and safety of citizens.

The new body will undertake comprehensive investigations and forensic reconstructions of crimes; as an auxiliary technical and scientific body, its doctrine is civilian in nature. It will have the most modern equipment available and its work will meet international standards.

*Recommendation 5. Panama should faithfully comply with its international human rights obligations by ensuring that domestic legislation effectively guarantees the enjoyment of those rights.*

The new Criminal Code specifically criminalizes crimes against humanity and devotes an entirely new Title, Title XV, to human rights violations, incorporating the relevant international norms in three sections. In section I, on violations of international human rights law, articles 431 to 433, for example, specifically define and criminalize enforced disappearance.

*Recommendation 6. The teaching of human rights should be strengthened at all levels of education and in the law enforcement sector.*

In order to strengthen and expand planning and curriculum design in the field of human rights education, an addendum to the technical cooperation agreement between the Ministry of Education and the Inter-American Institute of Human Rights was signed in Panama City in March 1995. Article 3 of the addendum extended that agreement for a period of two years.

Under the agreement, 50 folders containing valuable bibliographic information and practical information on methods to be used in human rights education (teaching guides) were provided; they served as the basis for two days of training for social sciences teachers from 25 technical colleges, who now constitute the first network of human rights outreach workers in schools. The agreement also made it possible for Dr. Magdalena Velazquez, a consultant with the Inter-American Institute of Human Rights, to provide technical advisory services. She reviewed the plan of action for the United Nations Decade for Human Rights Education, the human rights teaching and promotion project, and held a one-day training seminar for teachers and students from two school districts belonging to the Youth Sub-Commission on Human Rights (Chiriquı and Panama).

An agreement on civic electoral education was concluded between the Ministry of Education and the Panama Electoral Tribunal with the aim of fostering democracy among young Panamanians through education about democracy in social studies, civic education and public administration courses and by promoting and organizing student governments which operate as cultural associations in schools.

Under Act No. 2/1984, the Commission to Promote Human Rights Teaching within the Formal Education System was reorganized as a non-governmental organization (NGO). The Commission's activities are coordinated by the Department of Education. Five projects have been developed with this NGO as part of the Decade plan of action.

The signing of Act No. 34 of 6 July 1995 led to the incorporation of human rights as a core subject in the curriculum (art. 145). In this connection, the National Coordinating Council for Human Rights Education has carried out the following activities: revision of curriculum content for each grade and level; preparation of a syllabus showing the human rights content of subjects taught in primary and secondary schools; and the holding of a seminar-workshop entitled "Human rights in the classroom" with support from a joint United Nations Educational, Scientific and Cultural Organization (UNESCO)-Danish International Development Agency (DANIDA) project, during which an evaluation was carried out and proposals were made regarding the curriculum for human rights education. This research was conducted under the technical responsibility of the Centre for Outreach Workers and UNESCO.

A community project entitled “Tolerance and education for democracy, human rights, peace and development” was launched as part of the United Nations Year for Tolerance (1995) with support from UNESCO and the Celestín Freineth Institute. The first phase of the project consisted of five training modules for teaching staff from 13 schools in the San Miguelito Special District, where serious problems of intolerance had been identified. The aim of the project is to draw up a theoretical, methodological and practical proposal on how to teach pupils tolerance with the involvement of the educational community, thereby enriching Panamanian pedagogy while promoting democratic coexistence. The project will run for five years.

In 2007, on the last day of the Inter-American Encounter of Ministers of Education on Human Rights Education, which was held in the context of the thirty-seventh session of the General Assembly of the Organization of American States (OAS), the Ministers of Education of 19 American countries approved the Panama Declaration, which calls for the teaching of human rights at the primary and intermediate levels to children between the ages of 10 and 14. That proposal was transmitted to the Secretary-General of OAS, José Miguel Insulza, and approved by the General Assembly.

The Ministers of Education also approved a proposal by Panama to establish a training centre for human rights teachers which would include an international centre to monitor respect for and effective enjoyment of human rights in society.

The National Police currently operates a training programme to prevent abuses consisting of 16 courses on human rights and humanitarian principles and their relation to police work, for a total of 80 hours of theory and practical training based on the handbook published by the International Committee of the Red Cross (ICRC) entitled “To serve and protect: human rights and humanitarian law for police and security forces”.

To date a total of 309 police units have received training in human rights, with the main topics being:

- Workshops on values (moral, family, community, etc.) as the basis of natural law
- Basic professional ethics
- Refresher courses on due legal process (judicial guarantees, formalities, etc.), that must be observed without exception in crime prevention and during detention and judicial investigations
- Basics of humanitarian police work
- Applying the law in a democratic State. Basic notions of the hierarchy of laws and the obligations of civil servants to conduct themselves in accordance with these concepts
- The legal, personal and moral consequences of infringement of the ethical and legal principles governing the actions of the police, whether trained in humanitarian principles or not, in the performance of official duties, pursuant to the Disciplinary Rules of the National Police (Executive Decree No. 204 of 3 September 1997) and in accordance with ordinary criminal law (the Criminal Code and Code of Criminal Procedure currently in force in Panama).

*Recommendation 7. The contents of the Final Report of the Truth Commission of Panama, which should be available to all Panamanians, should be adequately disseminated in order to increase awareness of the suffering of the victims and their families.*

The Ombudsman's Office has organized the distribution of free copies of the Truth Commission's report.

*Recommendation 8. An official Day of the Disappeared should be established to allow the State to honour those who gave their lives for democracy in Panama.*

While "a day of the disappeared" has not yet been established by law, there has been talk of designating 9 June as such a day.

*Recommendation 9. Systematic excavations of sites believed to contain victims' remains should be undertaken.*

This recommendation was made in April 2002, just as the Truth Commission submitted its report; subsequently the Truth Commission itself carried out excavations of sites.

*Recommendation 10. Samples of the saliva of family members of the disappeared and of recovered remains should be collected for subsequent mitochondrial DNA analysis and identification.*

On 18 April 2002, after the Truth Commission had submitted its final report, the Commission's mandate was extended and it continued its investigations. The Truth Commission Follow-Up Office began preparing a DNA database of saliva samples taken from the families of the disappeared. The database contains genetic data on 70 family members of persons who disappeared or were killed between 1968 and 1989 and is housed at the Institute of Legal and Forensic Medicine.

*Recommendation 12. A follow-up body to preserve all materials from investigations, declassified documents, DNA test results and remains recovered in the context of the inquiries undertaken by the Truth Commission should be established.*

The Truth Commission archives are currently being stored by the Catholic Church.

#### ***Question 5***

Article 144 of the Panamanian Criminal Code states that the penalties applicable in cases of abortion shall not apply:

(a) If the abortion is carried out with the woman's consent in order to destroy the product of conception occurring as a result of rape as duly documented in court proceedings;

(b) If the abortion is carried out with the woman's consent on serious health grounds that may endanger the life of the mother or the product of conception.

In the first case the offence must have been notified to the competent authority within the first months of the pregnancy, while in the second case the serious health grounds must be determined by a multidisciplinary committee appointed by the Ministry of Health for that purpose; this committee may then authorize the abortion. In both cases the abortion must be performed by a physician in a State health centre.

It should be clarified that in 2007 Panama enacted a law adopting a new Criminal Code, which is scheduled to enter into force in May 2008. With regard to abortion, the law stipulates that the aforementioned exceptions shall continue to exist, the only change being that the physician or health professional appointed by the multidisciplinary committee constituted by the Ministry of Health or by his or her superiors to carry out the abortion shall have the right to state his or her conscientious objection on moral, religious or any other grounds in order to be exempted from participation in the procedure.

### ***Question 6***

#### **(a) Overcrowding**

Prison overcrowding is thought to be due primarily to the vigilance of the criminal investigation process, given that pretrial detention is ordered by the Public Prosecutor's Office whenever an offence carries a penalty of two or more years' imprisonment. This measure is not officially reviewed by the judges until the summary indictment phase.

Overcrowding is defined as the presence within a physical space of a number of persons that greatly exceeds the number for which the space was designed. On the basis of this definition, it can be said that the Panamanian prison system continues to suffer from overcrowding, although not to a degree that could be considered either serious or widespread. For example, in some of the country's 39 national prisons, such as El Renacer, the Women's Rehabilitation Centres and the Colón, Llano Marín and David prisons, as well as in some police stations holding 50 or fewer persons, the number of persons deprived of liberty falls below the facilities' capacity.

On the other hand, in centres such as the La Joya, La Joyita, Nueva Esperanza, David, La Chorrera and Changuinola prisons, the population currently exceeds the capacity of the facilities by a significant degree. In other words, overcrowding does exist, but it is aggravated by other conditions, such as deteriorating infrastructure and the little time allotted for recreation, fresh air or visits.

It should be noted that the problem of overcrowding has grown worse in Panama since 1996, with the closing of the Model Prison and the temporary suspension of certain treatment measures such as the issuing of work permits and reduction of sentences for community work, which were not being appropriately regulated at the time.

Other factors contributing to the increase in overcrowding have been the rise in criminal behaviour in general and the excessive use of pretrial detention, to the detriment of other precautionary measures.

Another key factor was the closing of the Coiba Penal Colony in 2003.

To get a comparative view of the degree of overcrowding in Panama's prisons at various times, it will be noted that in 1990 the national prison population averaged 5,000, while prison capacity stood at 6,000 individuals.

Around 1996 the national average was 7,500 persons, while institutional capacity remained at 6,000, yielding a deficit of 1,500 places.

Towards 1999 the national prison population rose to 9,000 while prison capacity grew to 7,000 places; in spite of this, the deficit nevertheless grew to 2,000 places.

Beginning in 2003 the prison population stabilized at roughly 11,300 persons, and it has remained at that level to date; prison capacity, meanwhile, has risen to 8,000 places, creating a deficit of some 3,300 places.

It should be noted, however, that this deficit is concentrated in four centres: La Joya and La Joyita in Panama province, where 57 per cent of all prisoners in the country are concentrated; the Nueva Esperanza Centre in Colón province, which accounts for 10 per cent of the country's prisoners; and the Changuinola Public Prison, which accounts for roughly 1.2 per cent of the national prison population.

Taking the current shortfall described above as the point of departure, the General Office of the Penitentiary System developed a plan for 2008 aimed at reducing overcrowding through the following activities:

#### **Master plan for new modules**

An architectural firm is currently working with Penitentiary System staff to design modules that will hold 1,000 detainees and have all the facilities a modern centre should have, pursuant to Act No. 55/2003, reorganizing the Panamanian prison system. This module is to be built at the La Joya complex, where the La Joya and La Joyita centres are located, with funding that has been secured from the Government of Taiwan. It is estimated that this facility will become operational in early 2009. Plans also call for the construction of two additional pavilions at the La Joya complex, to accommodate a total of 306 and 112 prisoners respectively. Work is also going ahead on the design and construction of a prison at Changuinola, which will accommodate 500 prisoners and replace the existing public prison there. The possibility of building a centre for the central provinces where it would be possible to relocate prisons that are currently being operated in police stations is also under study.

#### **Treatment measures**

Other ideas set out in the 2008 plan to combat overcrowding include: accelerating the implementation of Act No. 28/2005, which allows sentences to be commuted to community labour, maintenance work, education and other duly authorized activities inside the prison; continuation of the voluntary repatriation of foreign convicts to their countries of origin, under orders of the Penitentiary System; increased use of release on parole and reduced sentences; hospital arrest or house arrest for persons with serious health problems; redistribution of the prison population to prisoners' places of origin; continued awarding of permits for work and

study outside prison facilities, during which time prisoners are considered to be on parole; and the involvement of prisoners in community service. These prisoners may be given permission to make weekend family visits, the duration of which is determined in accordance with a sliding scale and may range from 12 to 48 hours.

### **Separation of prisoners within prisons**

A system for the classification of prisons has been established according to which La Joya has been designated to take in prisoners serving sentences while La Joyita is intended for those awaiting sentencing.

Each of these prisons, however, has an internal separation plan according to which prisoners are placed, on the basis of scientific criteria, in groups that are as homogenous as possible; the groups thus formed will occupy the available space.

This task is extremely complex, one of the main problems being the existence of organized gangs inside the prisons, which is problematic in that it poses risks to the prisoners themselves.

Separating the prison population on the basis of scientific criteria increases the likelihood that the available space will be used more effectively, since at present it is quite common for one or two prisoners to be placed together in a large cell because they are incompatible with the rest of the population, while other cells of the same size may hold 20 or 30 prisoners.

With regard to the problems currently faced in dealing with overcrowding, it should be noted that the system has been facing the same difficulties since 1996, when the problem first became apparent. This is partly because the judicial and administrative authorities persist in using imprisonment as the penalty of choice rather than using other precautionary measures.

It should be noted that of the current population of 11,300 prisoners, 57 per cent, or 65,000 individuals, are being tried and may be declared innocent when their trial concludes. The problem with the remaining 43 per cent of the population, i.e. those who are serving sentences, is that many of them have been sentenced and imprisoned by the administrative authorities for reasons that ought never to have been punished by imprisonment.

The 2008 plan for reducing overcrowding contains a section that points out the need to coordinate with these authorities in promoting the use of methods other than detention.

Furthermore, there are scant financial resources available for the construction of new prisons. Normally, the annual budget of the General Office of the Penitentiary System is broken down into salaries, food for the prison population and other operating costs. The line for investment is minimal, with such resources coming from below-the-line entries or donations. Another problem is that the new buildings built since 1996 to offset overcrowding did not adhere to any notion of prison design, so that facilities that were supposed to offer solutions to the problem of overcrowding themselves posed problems in terms of ventilation, natural lighting and confinement.

**(b) Conjugal visits**

Problems relating to conjugal visits in the women's prisons derive chiefly from the lack of sanitary conditions female prisoners require to enjoy visits with their partners in an environment free from infectious diseases.

The reason that conjugal visits take place in some prisons but not in others, including women's prisons, is the lack of any infrastructure within which this type of activity could be developed. There is no prohibition against such visits in the sense that they are not permitted for men but prohibited for women.

In fact, article 69, paragraph 20, of Act No. 55/2003 reorganizing the Panamanian penitentiary system stipulates that any prisoner has the right, inter alia, to "receive conjugal visits with a view to strengthening family ties".

Currently, of the 39 penitentiaries and prisons in Panama only the following provide for conjugal visits:

El Renacer Rehabilitation Centre, since 1987;

La Joya and La Joyita prisons, since 1996;

David public prison, since 2003; and

Tinajitas Detention Centre, since 2005.

It should be noted that all conjugal cubicles were built with resources from outside the penitentiary system, as the prison budget is chronically inadequate, a situation that prevents the necessary facilities from being built; it is for this reason that external funding is used.

With the exception of the conjugal unit at David prison, which was financed by Caritas Internationalis and Pastoral Penitenciaria, the remainder of the cubicles were financed or underwritten by the Office of the First Lady. The recurrent refrain of insufficient resources is currently one of the reasons more conjugal cubicles are not being built.

**(c) The situation in the La Joya and La Joyita prisons**

Prisons in Panama are faced with a series of problems that include overcrowding and inadequate budgets. In addition, there is an overriding need to improve physical plant and distinguish between prisoners in pretrial detention and those serving sentences, as the classification set out in Act No. 55/2003 has yet to be implemented.

**Drinking water supply**

The La Joya prison complex has two sources of drinking water. The first is the water purification plant operated by the Penitentiary System, which supplies La Joya and supports La Joyita. The second is the Pacora water purification plant, which supplies the adjoining communities as well as the La Joyita centre.



By mid-November 2007 the two submersible water pumps which brought untreated water from the Pacora River began to experience problems that led to a reduction in the volume of water provided to the La Joya and La Joyita centres; this affected some 5,500 prisoners and 300 State employees.

At that time the water treatment plant operated by the Institute of National Aqueducts and Pipelines (IDAAN) also suffered damage, further affecting the water supply. Accordingly, the following measures were taken to deal with the problem:

First, the assistance of IDAAN, which is the official agency responsible for drinking water supply, was sought; the agency then helped to find an emergency solution, which consisted of bringing in water in tank trucks, some of which were contracted by the Colombian Consulate. This situation lasted for approximately one week, until two temporary pumps could be installed; these then supplied water to individual pavilions according to a regular schedule.

During the night reserve tanks were filled to provide water for prisoners' needs. The second measure was the establishment of an intersectoral commission headed by the Minister of Government and Justice, the Vice-Minister of Health, the Deputy Director of IDAAN and consisting also of technical teams from these bodies; as a result of their efforts, the La Joya and La Joyita complexes carried out an inspection and assessment of the situation at the facility, which revealed that the following were in need of repair:

The drinking and reserve water systems;

- (a) The plumbing, sanitary facilities and electrical wiring in the residential pavilions;
- (b) The external perimeter fence;
- (c) The watchtowers;
- (d) The outside electrical system (transformers and cables);
- (e) Electric generators;
- (f) The lighting and security system;
- (g) Road surfaces, sidewalks and other paved areas;
- (h) The clinic;
- (i) The master plan for the new modules.

Of these, priority was given to solving the problem of drinking and reserve water supply. Specifically, funds were mobilized and two underwater pumps capable of pumping 350 gallons per minute were purchased. These pumps replaced the temporary pumps that had been installed during the crisis.

Another measure has been to ensure sufficient water intake to prevent deterioration of the pumps caused by sedimentation and the dragging of hoses when the river rises.

These steps have fully solved the problem of water supply at the La Joya and La Joyita centres. In addition, two centrifugal pumps with a capacity of 200 gallons per minute have been installed in the reserve tanks in La Joya and La Joyita to ensure better pressure. Two additional 25,000-gallon tanks will also be added to the three already in place at the La Joya complex.

Solving the water supply problem also involved in the repair and maintenance of the water purification plant at the La Joya complex and the purchase of water treatment equipment.

As for wastewater, in mid-December 2007 the septic tanks at La Joya and La Joyita were thoroughly cleaned, and there are plans to operate waste treatment plants for the entire La Joya complex. These will consist of four plants and an oxidation pool.

### **Plumbing, sanitary and electrical systems in the residential pavilions**

A section of Pavilion 3 at La Joya has been repaired. Once this work is completed, prisoners from other pavilions will be moved into the facility so that repairs can be made to the new pavilion, which has remained vacant, and thus the work at both centres can gradually be completed.

It will be noted that this process is slow, given that it is not possible to empty the prison out entirely and in view of the magnitude of the work needing to be done.

### **Perimeter fence**

Work is being done on those sections of the fence in need of repair, which are also being painted. This work is being done throughout the La Joya complex.

### **Watchtowers**

Ten concrete watchtowers are being erected to replace the existing metal towers, which are in poor condition. Another 10 towers will be built later, until all 20 will have been replaced.

### **Outside electrical system**

The system is currently being evaluated and estimates are being received from companies seeking contracts for the repair of cables and transformers throughout the La Joya complex.

### **Electrical generators**

Repairs are being made to two 250-kVA generators in La Joya and a 300-kVA generator in La Joyita, which are alternate sources of power in cases of power failures. In addition, the Social Investment Fund is in the process of approving the purchase of three new generators for the La Joya complex.

### **Lighting and security systems**

Eight movable light towers are in the process of being purchased; these will be used until construction of the watchtowers has been completed and the towers' lighting systems have been installed.

### **Repair of road surfaces, sidewalks and other paved areas**

The Ministry of Public Works is currently repairing and patching the main road in the La Joya complex and is building and paving a road around the perimeter of both prison centres.

### **Clinic**

On 15 February 2008 a 60-bed clinic was opened at La Joyita.

In addition to the above, it should be noted that the limited opportunities for time spent outdoors, in visits or recreational or sports activities is largely due to the fact that these two prisons hold over 50 per cent of the country's prison population, thus making their administration more difficult. This problem is exacerbated by the lack of trained personnel, which results in inadequate attention to these needs.

### ***Question 7***

Measures taken in this area fall into three categories. In the first category are measures relating to the training and sensitization of State prison employees in the area of human rights; in the second are measures having to do with the supervision and monitoring of the work of State prison employees; and in the third category are measures relating to the legal proceedings that can be brought against State prison employees who violate human rights and the punishments imposed on them.

With regard to training and sensitization of State prison employees, both the National Police and the General Office of the Penitentiary System operate formal training programmes with a human rights focus. Support for this training is provided by the Office of the Ombudsman and NGOs as training bodies.

With regard to the supervision and monitoring of the work of State prison employees, the Ombudsman's Office has a mechanism known as the prison mailbox that allows prisoners to file complaints directly with the Office if they feel that their rights have been violated. In addition, numerous bodies, such as the Ombudsman's Office, the Office of the Procurator-General, the judiciary and NGOs are constantly engaged in direct monitoring in the prisons. Furthermore, the penitentiary system has its own mechanisms for monitoring the conduct of its staff.

As to judicial proceedings and punishments relating to State prison employees who violate human rights, the General Office reports to the Office of the Procurator-General any staff who are alleged to have committed human rights violations or any other kind of criminal offence so that they can be prosecuted and punished in accordance with the law.

As mentioned earlier, the National Police operate a programme of preventive humanitarian police training that entails 16 courses in human rights and the humanitarian principles that apply to police work, 80 hours of classes in theory and practice developed in accordance with the ICRC handbook entitled "To serve and protect: human rights and humanitarian law for police and security forces".

To date a total of 309 police units have received training in human rights, with the main topics being:

- Workshops on values (moral, family, community, etc.) as the basis of natural law
- Basic professional ethics
- Refresher courses on due process (judicial guarantees, formalities, etc., that must be observed without exception in crime prevention and during detention and judicial proceedings)
- Basics of humanitarian police work
- Information on defensible human rights
- Applying the law in a democratic State. Basic notions of the hierarchy of laws and the obligations of civil servants to conduct themselves in accordance with these concepts
- The legal, personal and moral consequences of infringement of the ethical and legal principles applicable to police bodies, whether or not trained in humanitarian principles, in the performance of official duties, pursuant to the Disciplinary Rules of the National Police (Executive Decree No. 204 of 3 September 1997) and in accordance with ordinary criminal law (the Criminal Code and Code of Criminal Procedure currently in force in Panama)

Once again, Panama's criminal law provides civil servants who abuse their functions to subject persons deprived of liberty to harsh treatment or degrading punishments, ill-treatment or arbitrary measures shall be punished by two to five years' imprisonment.

Here it should be noted that there have been many cases in which law enforcement officers and prison employees have been prosecuted on these grounds.

### *Question 8*

#### **1. Pretrial detention**

The maximum duration of pretrial detention is determined by the minimum penalty established for a particular offence, as indicated in article 2141 of the Judicial Code.

“Article 2141: Pretrial detention shall be waived by the judge without any further procedures, either by the court or by petition of one of the parties, whenever the minimum penalty established for the offence in question is exceeded, in accordance with the record of the proceedings. In such cases pretrial detention shall be replaced with one of the other precautionary measures set out in article 2127 of the Judicial Code.

Decisions issued by the court with a view to implementing the provisions of this article may not be appealed.”

It can be seen from the foregoing that the duration of pretrial detention depends on the minimum penalty established for each individual offence. It should be noted in this connection that in order to proceed with detention it is necessary for the offence to carry a minimum penalty of two years' imprisonment, as indicated in article 2140 of the Judicial Code.

## **2. Duration of detention**

Article 21 of the Constitution states that no person may be deprived of liberty except on the written order of a competent authority executed in accordance with legal formalities and on grounds established by law. It is also established that no person may be detained for more than 24 hours without such detention having been ordered by the competent authorities.

## **3. Pilot plan for electronic monitoring bracelets**

This plan is governed by resolution No. 27 of 31 May 2006, issued by the Procurator-General, and has been in operation since that date. It is intended for pregnant women and mothers with children under the age of 6 months, prisoners under house arrest who are not considered to be dangerous and persons awaiting trial who can be released on bail with work or school permits.

Under this plan, prisoners can remain in their social and work environment with full enjoyment of their human rights, staying in their homes under supervision, with an option to work or study. The plan enhances their quality of life, offers better opportunities for social reintegration, minimizes prison overcrowding and allows prisoners to integrate themselves in existing networks.

A total of 58 persons have worn electronic bracelets; the measure was suspended in three cases.

Electronic monitoring systems that use bracelets are now a reality, and their use is growing in the countries of the European Union, the United States of America and Mexico.

Electronic monitoring provides an alternative to imprisonment and has a number of benefits for the judicial and penitentiary systems: it is less costly; it helps to prevent prison overcrowding; it safeguards the human rights of prisoners and allows them to remain in their social and work environment without losing their jobs, thereby enabling them to contribute towards compensation of victims; prisoners do not suffer the desocializing effects of prison life; and prisoners are afforded an opportunity to exercise sufficient control over their lives to guarantee their social defence.

### **Pilot plan 1**

The first pilot plan involving the use of electronic monitoring bracelets ran for three months in 2005. The results of this trial period, which involved persons deprived of liberty by a decision of the Public Prosecutor's Office, were positive. The pilot plan was established by resolution No. 065 of 1 September 2005, issued by the Procurator-General.

It was intended for persons involved in criminal proceedings at the summary phase who were awaiting trial but were eligible for a precautionary measure other than pretrial detention.

This system of remote monitoring was tried on eight persons who had been deprived of liberty by a decision of the Public Prosecutor's Office, met the established minimum requirements and lived between the Panama and San Miguelito districts.

### **Pilot plan 2**

By resolution No. 027 of 31 May 2006 issued by the Procurator-General, the pilot plan for the implementation of remote location by means of electronic monitoring bracelets was expanded to ensure compliance with precautionary measures and was tested on 100 persons who had been charged under orders of the Public Prosecutor's Office. The plan covered Panama district, San Miguelito, La Chorrera, Arraiján and the community of Veracruz.

#### *Criteria used in selecting participants*

The criteria for selecting participants in the pilot plan were established in resolution No. 027 of 31 May 2006:

- Accused persons wishing to participate voluntarily in the programme
- Sick persons whose health problems cannot be adequately dealt with in a prison setting
- Pregnant women and women with children under the age of 6 months, with the exception of women who pose a threat to the child or nursing infant
- Persons placed under house arrest who are not potentially dangerous
- Accused persons holding work permits
- Accused persons holding study permits

#### *Revocation of the measure*

Rule 12 of the Rules governing the electronic monitoring pilot plan establishes that this measure may be revoked for the following reasons:

1. The individual is found outside the monitoring area;
2. The individual removes the bracelet;
3. Fixed telephone service is temporarily lost or suspended;
4. The individual changes his or her place of residence without the authorization of the proper authority;
5. The individual damages, alters or modifies any part of the monitoring system;

6. The individual fails to comply with the requirements of the programme;
7. The individual is investigated for a new offence;
8. The individual denies persons designated by the programme supervisor or the investigation offices access to the residence where the monitoring equipment is located;
9. The individual fails to report to meetings set up by the investigation offices;
10. The individual disrupts public or family order.

*Results obtained*

Applications filed	90
Number of participants selected	60
Violations by participants	4

*Number of participants completing the programme*

Return to pretrial detention	2
Withdrawal of charges by the victim	5
Acquitted	2
Other precautionary measure	5
Sentence commuted	1
Total	15

Of those who participated in the programme, 88.66 per cent did not return to prison.

***Question 9***

Section II of Executive Decree No. 23 of 10 February 1998 amplifying Act No. 5 of 26 October 1977, by which the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto were adopted, entitled “Concerning persons in need of temporary protection”, addresses the Temporary Humanitarian Protection Statute in its first chapter. The Statute is described in the following words:

“In cases where large-scale flows of persons enter the country illegally or in an irregular manner in search of protection, such protection shall be provided temporarily and on the basis of a Temporary Humanitarian Protection Statute (hereinafter “the Statute”), whose basic elements are set out in the present Executive Decree. The Executive Branch may adopt any legal and emergency measures it deems necessary, in accordance with the magnitude of the situation” (art. 80).

**(a) Measures to remedy the situation**

As to measures that the State party intends to take to remedy this situation, it should be noted that since approximately 1996 all persons in need of temporary humanitarian protection in Darién province have retained their temporary humanitarian protection status, even though by law it lasts for only two months. The Decree states:

“The protection conferred by this Statute shall have a duration of two months reckoned from the date on which the massive flow is registered. During this period, the competent bodies of the State, coordinated by ONPAR [the National Office for Refugee Affairs], shall offer the benefits deriving from the implementation of the present Statute and shall manage their return to the country whence they came or their resettlement in third States. In exceptional cases, the Executive branch shall extend the period accorded under this Statute, in accordance with the magnitude of the situation.”

Article 84 of the Executive Decree describes the restrictions placed on the movement of persons who enter the country in massive flows. However, it should be clarified that while their movement may be restricted for reasons of security, such persons may request permission to leave their assigned areas for health reasons, and ONPAR provides them with such authorization and notifies the competent authorities.

For geographical reasons, Darién province is considered to be a dangerous area because it is situated on the border, and Panama bears responsibility for ensuring the protection of these persons.

**(b) Refugee status**

These individuals are not awaiting refugee status and are not asylum-seekers; they are nevertheless recognized by the State as belonging to the category of persons in need of temporary protection or temporary humanitarian protection. However, persons covered by the Statute do not enjoy the same rights and legal and social benefits as persons who are formally recognized by the National Commission for the Protection of Refugees as enjoying refugee status.

It is important to note that some of these individuals have chosen to legalize their status through marriage under a project sponsored by UNHCR and the Centre for Human Rights Research and Promotion (CIPDH).

**(c) Reform of Executive Decree No. 23/1998**

Executive Decree No. 23 of 10 February 1998 is not undergoing any revision.

***Question 10***

In order to answer this question, Panama would invite the Committee to read two documents:



1. Inter-American Development Bank (IADB), *Programa de Mejoramiento de la Administración de Justicia. Primera Etapa* (PN-0086), at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=460915>;
2. Inter-American Development Bank, *Documento Conceptual del Proyecto de la Administración de Justicia. Etapa II* (PN-0157), [www.iadb.org/IDBDocs.cfm?docnum=861108](http://www.iadb.org/IDBDocs.cfm?docnum=861108).

In order to respond to the Committee's question, Panama wishes to draw attention to the results of the first phase and the outstanding challenges identified by IADB in the aforementioned project concept document.

It should be noted that these results and challenges grow out of the culmination of the first phase of the project.

As part of the efforts to support this sector, in 1997 the Bank approved the first phase of the Modernization of the Administration of Justice Programme with a view to improving the quality of legal and judicial services in Panama in order to strengthen the rule of law. Recognizing that achieving this objective would be a major undertaking, the operation was conceptualized for an initial phase.

The Programme is divided into two subprogrammes, the first of which focuses on the Judicial Branch and the Office of the Procurator-General with a view to helping the country improve its judicial system, speeding up response time, ensuring due legal process and lowering barriers to citizen access. The objective of the second subprogramme, which focuses on the Office of the Solicitor-General, is to help the country enhance the quality, efficiency and transparency of legal actions and proceedings of the Government in order to improve relations between the State and civil society.

With regard to the first phase of financing, the Programme was designed to ensure that some activities took place at the national level in the short term, while other activities would, owing to their complexity and cost, be executed throughout the entire Programme implementation period.

- The first phase of the Programme was evaluated in two separate stages, during execution and after completion. The midterm evaluation made it possible to revise the baseline and update it in areas where it had not been possible to define it in the original Programme design. This evaluation, which was independent in nature, was conducted in two areas, one technical and the other economic. Once project execution was completed, the final project report was prepared. These evaluations made it possible to determine the areas of greatest impact, to set targets for short-term Programme activities and revise execution in terms of the logframe. The results of these evaluations are described in the following paragraphs.

- The Judicial Branch and the Office of the Procurator-General developed and introduced judicial management and reorganization models in urban and rural settings in two jurisdictions (San Miguelito in Panama City and David in Chiriquí province). These new models of judicial organization broke with the traditional structure for the provision of judicial services, using economies of scale, strengthening inter-agency coordination links and separating jurisdictional tasks from administrative tasks, professionalizing the latter by putting them in the hands of experts in management and administration with a view to supporting the judges and prosecutors, inter alia.
- Results in reducing the judicial backlog exceeded expectations: the target of 45,000 settled civil cases was more than met, with 122,000 cases settled. Institutional capacity in the areas of management and strategic planning was strengthened, and overall institutional capacity was enhanced, particularly in the use of statistical tools for decision-making and the reorganization and management of judicial services through the introduction of the aforementioned models. The structure of and process for career development in the judiciary were mapped out, this being one of the goals of the first phase. During programme execution, significant impact was had on the areas of institutional functioning through the use of strategic plans developed in a participatory manner and the introduction of management and monitoring based on quantitative documentation. The introduction of these management models provided support for a radical change in the provision of judicial services in the judicial circuits where the programme was implemented, as can be seen from positive statistical data which suggests that the experience should be replicated.<sup>3</sup>
- With regard to criminal investigations, the investigational capacity of the Procurator-General's Office was strengthened through the development of organizational activities in the areas of institutional management, training and the provision of highly sophisticated equipment for the analysis of evidence, thus effecting

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<sup>3</sup> For example, the Judicial Branch managed to reduce the time spent by judges in performing administrative tasks by 80 per cent, time that is now given to jurisdictional tasks; process-serving centres were able to increase the success rate for summonses from 60 per cent to 80 per cent, with 74 per cent completed within three days, as compared with a mere 40 per cent following traditional procedures. As from 2005, alternate methods of dispute settlement were introduced with relative success (as of 2003 the judicial bodies in Ancón dealt with approximately 800 cases a year, reaching a settlement or withdrawal of the case in 60 per cent of all cases); the post of court administrator was created and a model for a centralized, inter-agency and multidisciplinary approach was developed in the regional judicial units. In the case of the Procurator-General's Office, an 80 per cent improvement in response time in the allocation of cases was recorded.

a qualitative and quantitative improvement in the dispensing of criminal justice,<sup>4</sup> as well as through changes in judicial procedures and access to justice and the development of citizen participation.

- The execution by the Office of the Solicitor-General of subprogramme B met the objective of enhancing the institution's effectiveness through restructuring; this was done through the promulgation and implementation of Act No. 38/2000.<sup>5</sup> This outcome exceeded the targets set in the Programme, which merely proposed the formulation of legislation and the securing of a consensus for its adoption. In addition, the Programme met the objective of implementing a plan to expand service coverage to include the western provinces through the creation of a regional office in Santiago. Lastly, the plan for personnel training and the automation of management processes was carried out successfully, which meant that decisions could now be taken on the basis of readily available data and statistical tools. The Programme also supported the reform of administrative regulations and legal training for public servants through the creation of the regional centre for the modernization of public administration (CIMAP), which currently is the focal point for technical assistance and training services, which were provided to more than 4,000 users during the period 2002-2004 and included 180 monitoring and evaluation cycles.
- The results of these evaluations demonstrate the advisability and viability of a joint execution scheme involving the three beneficiary institutions. It is also clear that the shared investment by the judiciary and the Office of the Procurator-General in infrastructure during the first phase has made it possible to realize economies of scale by having the judicial offices of both bodies use common administrative services. This must be an essential feature of any effort to replicate this new administrative model.

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<sup>4</sup> Between 2003 and 2005 the time taken by criminal investigations in cases involving domestic violence and child abuse was reduced by 20 per cent and 15 per cent respectively. The processing of evidence in hearings increased by 100 per cent with the creation of the judicial morgue (which made it possible to conduct technical autopsies) and the improvement of the technical laboratories of the Procurator-General's Office. The Victim Assistance Centre makes it possible to collect evidence and conduct examinations almost as soon as a complaint is made, evidence and examinations which are indispensable to a proper investigation in cases involving sex crimes and physical abuse, and to provide psychological treatment to deal with shock as well as appropriate treatment in cases involving minors. During a trial the centralization of all daily documents in the central registry generated a savings of four days' processing time and resulted in a better distribution of work. It also led to a drastic reduction in the number of suspended hearings owing to the physical presence of court-appointed defence attorneys in the regional judicial units (in 2005, 58 per cent of all hearings in David and 43 per cent of all hearings in San Miguelito had a court-appointed defence attorney, hearings which under the traditional system would have had to be suspended).

<sup>5</sup> This Act proved to be of fundamental importance in unifying and structuring the work of public servants in establishing procedures and basic criteria for dealing with the public, avoiding abuses and corrupt administrative practices.

## Outstanding challenges

- As noted above, among the principal challenges facing the next phase, and as a result of the experience gained from the Programme, evaluation of the Programme and updated forecasts of needs in the sector, and taking into particular account the recommendations elicited by the work done by the State Justice Commission, it was decided, after extensive study, that support should continue to be provided to the three bodies participating in the first phase (the Judicial Branch, the Office of the Procurator-General and the Office of the Solicitor-General) in the following priority areas: (i) access to justice; (ii) comprehensive reform of the criminal court system; (iii) restructuring of the system for the administration of justice; (iv) jurisdictional reform; and (v) accountability and transparency.

The second phase of the project was approved by IADB on 21 June 2007 and has a reporting date of 31 January 2008; however, no project execution funds have been disbursed to date.

The administrative entities within the judiciary, the Procurator-General's Office and the Office of the Solicitor-General responsible for implementing the project are proceeding with the requisite administrative formalities (soliciting of tenders, etc.).

### *Question 11*

Between 2005 and 2007, 238,824 births (100 per cent) were registered throughout the country. Of those, 212,273 (88 per cent) were in the provinces and 26,551 (12 per cent) were in the indigenous regions (*comarcas*), according to the National Civil Status Registry.

The number of births registered in the indigenous territories increased from 7,761 in 2005 to 10,557 in 2007. It must be borne in mind that these figures come only from the *comarcas*. There are no data for the Nasos, Bribris, Ngabes or Emberá-Wounaan, who are not in the *comarcas*.

The Electoral Tribunal agreed with the Ministry of Foreign Affairs that a vice-consul should be appointed in San Vito (on the Costa Rica-Panama border) to perform the duties of a civil registrar. This service began on 1 May 1998, and most of the persons who have benefited are indigenous.

In March 2006, the Government of Panama established a health centre with maternity services in the community of Río Sereno, close to the border with Costa Rica, so that local Panamanian women, most of whom are indigenous, would not have to give birth in Costa Rica because of the lack of adequate hospital facilities in Panama.

The children of Colombian refugees on Panama's border with Colombia are presented to the authorities of the Civil Status Registry as having been born in Panama (supplementary evidence) to obtain proof that they were born on Panamanian soil.

## Civil Registration Department

## Vital statistics of the indigenous population, 2005-2007

Comarcas	2005		2006		2007	
	Births	Deaths	Births	Deaths	Births	Deaths
Kuna Yala <i>comarca</i>	1 514	320	1 514	267	1 347	338
Ngöbe Bugle <i>comarca</i>	6 044	192	6 044	208	8 879	9 467
Emberá-Wounaan <i>comarca</i>	675	21	675	47	331	22
Total	8 233	533	8 233	522	10 557	9 827

Most marriages are performed by different religious groups, *sahilaturas* and local authorities authorized to do so. The Civil Status Registry is responsible for recording marriages by officially registering the legal act. In 2005, some 10,011 marriages were registered, in 2006 there were 10,689 and in 2007 there were 12,084 marriages registered.

**1. Extent to which persons living in indigenous areas are included in the Civil Status Registry, as compared with the rest of the population**

Table 1

## Registration of births, 2005-2007

Provinces and <i>comarcas</i>	2005	2006	2007	Province total	%
	Births	Births	Births		
Bocas del Toro	5 556	7 089	7 790	20 435	9%
Coclé	4 542	4 476	4 525	13 543	6%
Colón	4 624	4 811	6 195	15 630	7%
Chiriquí	9 890	10 576	16 446	36 912	15%
Darién	1 149	1 655	1 373	4 177	2%
Herrera	1 895	1 883	1 949	5 727	2%
Los Santos	904	903	942	2 749	1%
Panamá	20 038	25 518	22 637	68 193	29%
Veraguas	4 919	4 674	4 350	13 943	6%
San Miguelito	4 756	4 475	6 002	15 233	6%
Área Oeste	5 084	4 777	4 675	14 536	6%
Arraiján	0	0	1 195	1 195	1%
Kuna Yala <i>comarca</i>	988	1 514	1 347	3 849	2%
Ngöbe Bugle <i>comarca</i>	6 491	6 044	8 879	21 414	9%
Emberá-Wounaan <i>comarca</i>	282	675	331	1 288	1%
Total	71 118	79 070	88 636	238 824	100%

Under the new legal provisions pertaining to the Civil Status Registry (Act No. 31 of 25 July 2006 and Act No. 17 of 22 May 2007), medically assisted births that have not been registered within six months shall be registered automatically, on the principle that all children have the right to an identity; the registration requirements for indigenous births have been similarly relaxed.

In order to achieve the Millennium Development Goals and comply with the State's social obligations, the Civil Status Registry has made major efforts to reduce under-registration by introducing action plans in areas where registration is least prevalent.

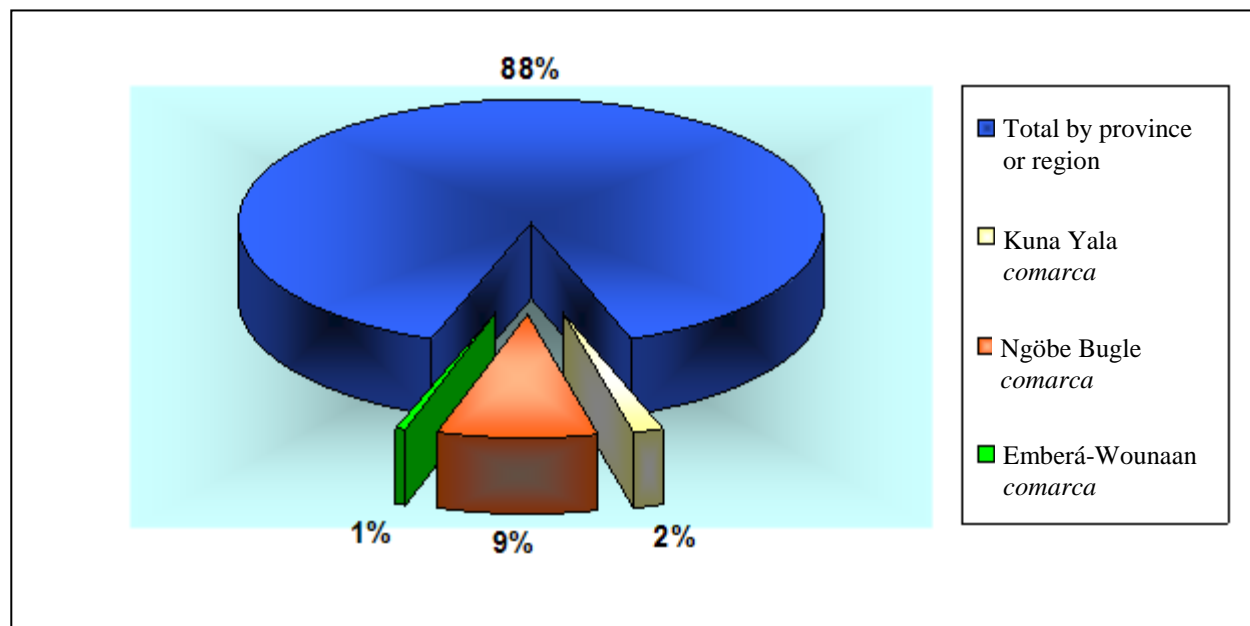
On average, 94 per cent of all registered births are medically assisted and 6 per cent are from areas of difficult access where the population is indigenous (see table 1).

It is hoped that cooperation with international organizations such as the Inter-American Development Bank (IDB) and the United Nations Children's Fund (UNICEF) and support from State bodies will have a greater impact and raise awareness of the need to register children.

The Civil Status Registry has more than 300 auxiliary registrars, who are employees of the Registry located in hard-to-access communities where the population is indigenous in order to register vital statistics (births and deaths) (see table 2).

**Table 2**

**Registration of births by province and *comarca*, 2005-2007**



A number of unusual situations exist in Panama's border areas:

**On the border with Costa Rica**

- There has traditionally been a problem with civil status registration because many Panamanian mothers from indigenous groups living in Panamanian territory would go to deliver their children in a hospital in San Vito in Costa Rica, close to the border, because of the lack of maternity facilities in Panama.

- These births were not registered in Panama because the medical certificates had to be sent to San José, the capital of Costa Rica, to be authenticated by the Panamanian Consulate, and then to the Ministry of Foreign Affairs in Panama for further authentication, and families of limited financial means could not afford the time and cost involved in registering these vital statistics.
- To tackle this problem the Electoral Tribunal agreed with the Panamanian Ministry of Foreign Affairs to appoint a vice-consul in San Vito, paid for by the Tribunal, to perform the duties of a civil registrar and be responsible for registering without charge and in a timely manner all live births, i.e. the children of Panamanian mothers. This service began in San Vito on 1 May 1998.
- In March 2006, the Government of Panama established a health centre with maternity services in the community of Río Sereno, close to the Costa Rican border, so that local Panamanian women, most of whom are indigenous, would not have to give birth in Costa Rica because of the lack of adequate hospital facilities in Panama. The new health centre does not yet provide round-the-clock maternity services; its current opening hours are from 7.30 a.m. to 3.30 p.m., Monday to Friday.

#### **On the border with Colombia**

- Panama faces a relatively constant flow of Colombian migrants, who cross the border illegally with their newborn children to reside in Panama, particularly in Darién province, which is located on the border with Colombia. When these children are over two years old they are presented to the authorities of the Civil Status Registry as having been born in Panama through the procedure for the late registration of births (supplementary evidence) in order to obtain proof that they were born on Panamanian soil.
- In some cases the Office of the United Nations High Commissioner for Refugees (UNHCR), which has set up camps for Colombian refugees in Panama as a result of the conflict in this neighbouring country, has interceded to encourage the Panamanian Civil Status Registry to recognize the children of mothers involved in the conflict who deliver in Panama and the circumstances of the birth are difficult to establish through traditional procedures. The women give birth in camps which are constantly being moved for reasons of security and there are no midwives or medical services recognized by the Panamanian authorities to issue a medical certificate. Each case is considered individually, and the relevant tests are carried out in situ to determine, using reasoned judgement, whether the birth in fact took place in Panamanian or Colombian territory.

#### ***Question 12***

Article 19 of Panama's current Constitution establishes that there shall be no privileges or exemptions or any discrimination on grounds of race, birth, disability, social class, religion or political views.

Furthermore, article 20 establishes the following:

“Panamanians and foreigners are equal before the law but, for reasons of work, health, morals, State security and the national economy, the law may make foreigners in general subject to special conditions or deny them the right to engage in certain activities. Depending on the circumstances, the legislature or the authorities may also take measures exclusively affecting the nationals of certain countries in the event of war or in conformity with the provisions of international treaties.”

In addition, article 14 establishes the following:

“Immigration shall be regulated by law, in accordance with the country’s social, economic and demographic interests.”

Without being discriminatory, Panama retains the discretionary authority to refuse to issue foreigners a Panamanian naturalization card on grounds of morals, security, health and physical or mental disability.

Since the Committee has requested comments on article 12 of the Constitution in the light of articles 2 and 26 of the Covenant, Panama wishes to analyse these articles in order to show that there is no discrimination resulting from the aforementioned article of the Panamanian Constitution.

Article 2, paragraph 1, of the Covenant establishes the guarantee of non-discrimination on grounds of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Articles 2 and 26 of the Covenant refer to specific forms of discrimination on grounds of “race, colour, sex, language, religion, political or other opinion (referring to discrimination because of a person’s opinions), national or social origin, property, birth or other status”, which are protected under article 19 of the Constitution.

As can be seen, the articles of the Covenant do not address the subjects of morals, security, health or physical or mental disability, but rather race, gender, language, religion and social background.

Panama, through the legitimate use of its sovereign powers with regard to migration, must have the authority to determine the individuals on which it chooses to confer the rights and responsibilities obtained through naturalization, as a basic measure of control. These powers should not be considered discriminatory under the terms of the Covenant, as they are not included among the provisions established therein.

In order to illustrate to the Committee that persons with disabilities are not excluded, attention is drawn to the website of the National Secretariat for the Social Integration of Persons with Disabilities (<http://www.presidencia.gob.pa/senadis/>), an intersectoral advisory and coordination body of the Executive which seeks to promote the efficient development of public policies for the full social inclusion of persons with disabilities and their families, and to promote the human rights of persons with disabilities and their families.



***Question 13***

The purpose of this provision is to carry out the monitoring and disciplinary control of the National Police necessary to ensure appropriate conduct in a State security body that serves all its members and is engaged in maintaining public order.

It must be noted that the right of male and female police officers to maintain their independence where sexual orientation is concerned is fully respected. However, as they are civil servants with responsibility for the public interest as objectively and subjectively defined (order, security, autonomy, credibility, efficiency, moral and legal authority, and psychological and physical health), certain acts, behaviours and situations may be inappropriate for them. These frequently include matters which are considered to relate to personal choice or self-determination, such as: the fulfilment of family obligations (domestic behaviour, timely payment of alimony, due observance of the rules governing visits with minor children, etc.); sexual and moral behaviour that may undermine the law, morals, decency, reputation or the peace of mind of other members of the institution (having extramarital sexual relations with a colleague's spouse, practising homosexuality or lesbianism, public displays of affection between heterosexual colleagues or subordinates during work hours or in situations that show a lack of commitment to their duties, moral image and behaviour inside and outside the institution); managing their finances (irresponsibly squandering their pay cheques, speculating or practising usury, making commercial loans for profit); maintaining friendships with and visiting the homes of persons who have been formally charged with a criminal offence; and frequently visiting places (bars, gambling dens, billiard halls) or urban or suburban areas with a high crime rate.

While such behaviours usually go unnoticed in the general population, they put civil servants in a vulnerable position.

It is clear that these acts are not offences; nevertheless they are likely to conflict with or be entirely incompatible with the satisfactory performance of professional duties or tasks, such as those of law enforcement officers.

An individual's sexual preference or orientation is not liable to sanctions under the Executive Decree mentioned; rather, as noted above, individuals are prohibited from performing acts that are incompatible with their post.

***Question 14***

Among the new legal provisions pertaining to the Civil Status Registry is article 52, paragraph 1, of the consolidated text of the Civil Status Registry Act, which provides that:

“Marriage shall take place before a competent judge, the magistrates of the Electoral Tribunal, the National Director or Deputy Director of the Civil Status Registry, the Regional Director of the Civil Status Registry, notaries public, priests of the Catholic Church or ministers of religious movements having legal personality in the Republic of Panama, who have been duly authorized by the Ministry of Government and Justice, in accordance with the relevant legal provisions.”

Below is a list of the religious denominations present in Panama. It should be borne in mind that some movements have not updated their legal documentation and are therefore not included in the list.

- The Panamanian Congregation of Jehovah's Witnesses
- The Seventh-Day Adventist Church
- The New Life Evangelical Church
- The Alpha and Omega Student Crusade
- The Ministry of Family Restoration
- The International Church of the Foursquare Gospel
- The Army of God Ministries
- The Panamanian Cooperation of the Seventh-Day Adventist Association
- The Evangelical Missionary Union

The names of religious denominations, their documentation and the expiry date of their permits are listed in the annex to this report.

### *Question 15*

Panama is mainly Catholic, but religious freedom exists and there are other religions and religious beliefs which are practised freely in the country.

Article 35 establishes freedom of religion in the following terms: "All religions may be professed and all forms of worship practised freely, without any limitation other than respect for Christian morality and public order. It is recognized that the Catholic religion is practised by the majority of Panamanians."

Reference should be made once again to article 19 of the Panamanian Constitution, which prohibits discrimination on grounds of religion: "There shall be no privileges or exemptions or any discrimination on grounds of race, birth, disability, social class, sex, religion or political views."

The 2006 report on freedom of religion in Panama by the Government of the United States of America gives a general overview of the subject:

"The Constitution provides for freedom of religion, with some qualifications, and the Government generally respected this right in practice.

There was no change in the status of respect for religious freedom during the period covered by this report, and government policy continued to contribute to the generally free practice of religion.

The generally amicable relationship among religious groups in society contributed to religious freedom.

The United States Government discusses religious freedom issues with the Government as part of its overall policy to promote human rights.

## **Section I. Religious demography**

The country has an area of 30,193 square miles and a population of approximately 3.2 million. The Government does not collect statistics on the religious affiliation of its citizens, but various sources estimated that 80 to 85 per cent of the population identified itself as Roman Catholic and 15 per cent as evangelical Christian. A 2003 CID-Gallup poll indicated that approximately 24 per cent of the adult population was evangelical Christian. Smaller religious groups included the Church of Jesus Christ of Latter-day Saints (Mormons) with an estimated 20,000 to 40,000 members, Seventh-Day Adventists, Jehovah's Witnesses, Episcopalians with between 7,000 and 10,000 members, Jewish and Muslim communities with approximately 10,000 members each, Hindus, Buddhists, and other Christians. The Baha'is maintained one of the world's seven Baha'i Houses of Worship in the country. Indigenous religions included Ibeorgun (among Kuna) and Mamatata (among Ngöbe). There was also a small number of Rastafarians.

Members of the Catholic faith were found throughout the country and at all levels of society. Evangelical Christians also were dispersed geographically and were becoming more prominent in society. The mainstream Protestant denominations, which included Southern Baptist Convention and other Baptist congregations, United Methodist, Methodist Church of the Caribbean and the Americas, and Lutheran, derived their membership from the Antillean black and the expatriate communities, both of which were concentrated in Panama and Colon Provinces. The Jewish community was concentrated largely in Panama City. Muslims lived primarily in Panama City and Colon, with smaller but growing concentrations in David and other provincial cities. The vast majority of Muslims were of Lebanese, Palestinian, or Indian descent.

Several religious organizations had foreign religious workers in the country. The Mormon Church had the largest number. Lutherans, the Southern Baptist Convention, Seventh-Day Adventists, and Episcopalians each had a much smaller number of missionaries; many were from other Latin American countries.

## **Section II. Status of religious freedom**

### **Legal/policy framework**

The Constitution provides for freedom of religion, provided that "Christian morality and public order" are respected, and the Government generally respected this right in practice. The Government at all levels sought to protect this right in full and did not tolerate its abuse, either by governmental or private actors.

Catholicism enjoys certain State-sanctioned advantages over other faiths. The Constitution recognizes Catholicism as "the religion of the majority" of citizens but it does not designate it as the official State religion.

The Christian holy days of Good Friday and Christmas Day are national holidays.

The Constitution provides that religious associations have “juridical capacity” and are free to manage and administer their property within the limits prescribed by law, the same as other “juridical persons”. The Ministry of Government and Justice grants “juridical personality” through a relatively simple and transparent process. Juridical personality allows a religious group to apply for all tax benefits available to non-profit organizations. There were no reported cases of religious organizations being denied juridical personality or the associated tax benefits.

Most foreign religious workers are granted temporary three-month missionary worker visas. A one-year extension customarily is granted, but one religious group complained that the extension could take up to four months. Foreign missionaries who intend to remain longer than 15 months must repeat the entire application process. Such additional extensions usually are granted. Catholic priests and nuns and Jewish rabbis are eligible for a special five-year visa.

The Constitution dictates that Catholicism be taught in public schools; however, parents have the right to exempt their children from religious instruction. The numerical predominance of Catholicism and the consideration given to it in the Constitution generally have not prejudiced other religions.

### **Restrictions on religious freedom**

Government policy and practice contributed to the generally free practice of religion.

The Constitution limits the type of public offices that religious leaders may hold to those related to social assistance, education, or scientific research.

During the period covered by this report, the Ombudsman’s Office mediated the case of four Rastafarian children denied access to public school because they refused to cut their hair. A similar complaint occurred in the previous period. According to the ombudsman, the children were allowed to return to school without having to cut their hair.

A Protestant group reported that the Government had been selectively applying the requirements for religious worker visas to favour some groups over others. The Protestant and other groups complained to the Government, and by the end of the period covered by this report, officials had resolved the problem.

There were no reports of religious prisoners or detainees in the country.

### **Forced religious conversion**

There were no reports of forced religious conversion, including of minor United States citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

## **Section III. Societal abuses and discrimination**

The generally amicable relationship among religious groups in society contributed to religious freedom.

Christian groups, including the Catholic, Episcopal, Methodist, Lutheran, Baptist, Presbyterian, Salvation Army, and Eastern Orthodox churches, participated in a successful ecumenical movement directed by the non-governmental Panamanian Ecumenical Committee. The committee members also had an interreligious committee that included Jewish Reform, Islamic, Buddhist, Baha'i, Hindu, and Ibeorgun religious groups. The committee sponsored conferences to discuss matters of faith and practice and planned joint liturgical celebrations and charitable projects. The committee was a member of the Panamanian Civil Society Assembly, an umbrella group of civic organizations that conducts informal governmental oversight and has been the driving force behind ethical pacts on the treatment of women and youth, civil society, responsible journalism, and decentralization”.

### ***Question 16***

Catechism classes are not compulsory in public schools.

Article 94 of the Constitution establishes the guarantee of freedom of education in the following terms:

“Freedom of education is guaranteed and the right to establish private schools, subject to law, is recognized. The State may have access to private educational establishments in order to ensure that these establishments pursue the national and social goals of promoting culture and the intellectual, moral, civic and physical training of pupils.

Public education shall be that which is given in public schools and private education that which is given in private schools.

Educational establishments, whether public or private, shall be open to all students, without distinction as to race, social position, political views, religion, or the nature of the relationship between the student's parents or guardians.

Both public and private education shall be regulated by law.”

### ***Question 17***

Panama Government wishes to stress that it fully guarantees the population freedom of assembly and freedom to express its opinions, however different they may be, in the appropriate place. Streets, avenues and roads are not suitable places for public demonstrations because the latter impede the free passage of persons. In Panama, the right of third persons to free passage is regularly hampered by frequent public demonstrations whose sole method of protesting consists of blocking roads (burning rubbish or tyres, throwing stones, destroying public and private property) and which generally select as their venue main thoroughfares or roads leading to the entrances of hospitals, universities and schools which must be kept clear at all times.

Recently these events have become extremely violent and unfocused and have resulted in much damage to public and private property.

It is the duty of the police to do their job of securing third persons' right of free passage without committing an abuse of power.

Crowd Control Units are elite police units specialized in handling and managing this type of demonstration. They are properly equipped so as to avoid bodily injury. Crowd Control Units are trained by multidisciplinary teams (lawyers, social workers, psychologists and specialists in mediation and conflict resolution) to apply the principles of tolerance, humanitarian policy and due process of law while dealing with breaches of the peace.

These units have been trained to use the requisite physical force, but only after issuing appropriate warnings.

Panama will continue to guarantee the right to free passage to which all Panamanians are entitled.

### ***Question 18***

Statistical reports indicate that in 2007 journalists from various branches of the media were charged with defamation in 12 trials held before courts in the First Judicial District of Panama. Proceedings in these cases were stayed.

### ***Question 19***

*Measures to oblige fathers to comply with judicial decisions concerning child support and to protect children who are the victims of failure to comply with this obligation*

The Panamanian Family Code, approved by Act No. 3 of 27 April 1994, contains the following provisions concerning the obligation to pay support:

#### **Article 384**

The obligation to provide support may be satisfied by the payment of the allowance stipulated, or by receiving and maintaining in the obligor's own home persons entitled to such support.

The right to support may be enforced by selling attached tangible assets. Unpaid support shall take precedence over any other debt without exception.

#### **Article 807**

In order to secure the effective provision of support, the court shall order of its own motion and proceed with the direct debiting of the obligor's salary and remuneration in favour of the beneficiary and may, at the request of the person concerned and without the need for any security, order the attachment of assets in order to secure compliance. If the employer or person responsible for effecting the direct debit or seizure, as appropriate, fails to do so, he or she shall be jointly liable for the obligation to provide support, without prejudice to any penalty he or she may incur for contempt of court.

### **Article 811**

The court of first instance, acting either on its own motion or at a party's request, shall sentence the obligor owing support to up to 30 days' detention for contempt of court, with immediate effect as from notification of the respective decision. This penalty shall remain in force so long as the following obstructive behaviour persists:

- Failure to remit support on the dates and terms ordered
- Evasion in bad faith of the payment of support. Bad faith is presumed to exist when the obligor's conduct and the facts indicate that he is evading his obligation by foregoing or abandoning work
- Transfer by the respondent of his assets after he has been ordered to provide support, if by effecting this transfer he evades his obligation

In cases giving rise to a penalty for contempt of court, it shall be incumbent upon the clerk of the court to draw up a record of the facts justifying the penalty.

### **Criminal Code**

#### **Article 206**

Any person who, without just cause, avoids, refuses, evades, breaches or abandons his obligation to provide support, or the duties and obligations inherent in parental authority, or owed to his descendants or relatives in ascending line, or to any other lawfully entitled persons, shall be sentenced to one to three years' imprisonment, weekend detention or community service. If the breach is partial or temporary, the penalty shall be one or two years' imprisonment. The penalty established in this article shall be increased by one sixth to one third if the offender carries out acts aimed at concealing, reducing or encumbering his assets, thereby creating an impediment to the fulfilment of his obligation to pay support.

*Measures taken through action by the lead agency (Ministry of Social Development)*

The Ministry of Social Development, acting through the Centre for Comprehensive Guidance and Care, provides advice on this subject and offers guidance as to the appropriate legal channels. In addition, support for children and young people in residential homes and in care programmes may be obtained through the Department of Children and Adoptions.

#### **Question 20**

*Prohibition of the employment of children under the age of 14*

The ban on employing children under the age of 14 as domestic servants established in article 70 of the Constitution is also covered by Act No. 3 of 27 April 1994 adopting the Family Code. Articles 508 to 513 of Part V of the Code concern working children.

### **Article 508**

A child working illegally means a child under the age of 14 performing any work whatsoever and a child over 14 but under 18 who is performing work expressly prohibited by law.

### **Article 509**

Children of 14 shall be prohibited from doing any work apart from that permitted under article 716 of this Code.

### **Article 510**

Young persons under the age of 18 shall be prohibited from doing work which by its nature, or on account of the conditions in which it is performed, would endanger the life, health or morals of young persons or which would affect their regular attendance at an educational establishment, in particular the following types of work:

1. Work in nightclubs, bars, discotheques and other places where alcoholic beverages are sold;
2. Work connected with gambling and games of chance, such as at racecourses, casinos, etc.;
3. The conveyance of passengers and goods by road, rail, air, inland waterways or the high seas and work on docks, aboard ships and in warehouses;
4. Work connected with the generation, transformation and transmission of electric power;
5. Handling of explosive or inflammable materials;
6. Underground work in mines, quarries, tunnels or sewers;
7. Handling of harmful or dangerous substances, devices or equipment that may expose them to the effects of radioactivity; and
8. The use of minors in public entertainments, films, theatrical performances, commercial advertising in cinemas, on the radio or television or in publications of any kind that adversely affect the dignity and morals of the minor, in pursuance of such regulations as may be established in this regard by the National Council on the Family and Children.

The provisions of subparagraphs 3, 4, 5 and 6 of this article shall not apply to minors' work in vocational schools, provided that such work is approved and supervised by the competent authorities.



**Article 511**

In order to work, minors must comply with the requirements of substantive and procedural labour laws, insofar as they are not incompatible with this Code.

**Article 512**

A minor may work for no more than six hours a day and solely during the daytime; under no circumstances may this work affect the minor's regular attendance at an educational establishment or cause harm to the minor's physical or mental health. Night work shall not be authorized under any circumstances.

**Article 513**

Working minors shall be entitled to a wage, social benefits and the other safeguards which labour laws grant to adults.

A minor's wage shall be in proportion to the hours worked, but in no circumstances may it be less than the statutory minimum wage.

*Working conditions of women domestic workers*

According to the country report presented at the tenth session of the Regional Conference on Women in Latin America and the Caribbean convened by the Economic Commission for Latin America and the Caribbean (ECLAC), from August 2006 to March 2007 the percentage of women among Panamanian domestic workers fell slightly, from 90 per cent to 89 per cent, while that of men rose from 9.6 per cent to 11 per cent.

The greater number of women entering the domestic labour market is coinciding with job losses in the formal sector. Thousands of women have turned to the informal sector for their first job - 199,273 in 2005 and 201,490 in 2006, or 47.2 per cent and 47.7 per cent respectively. During the same two years 46.1 per cent and 45.2 per cent of men worked in this sector.

Until 2006 (Executive Decree No. 7 of 10 March 2006) the minimum wage for female domestic workers was 119.00 balboas (B) in the districts of Panamá, Colón and San Miguelito and B106.00 in the remaining districts. Executive Decree No. 46 of 11 December 2007 increased the minimum monthly wage of female domestic workers by B15.00, which brought it to B134.00 in Panamá, Colón and San Miguelito and B121.00 in the remaining districts of the country.

Under Part III, Chapter III, Section II, of the Family Code entitled "Agricultural and domestic work performed by women and minors", minors between the ages of 12 and 14 may be engaged to carry out agricultural and domestic work (art. 716), but in a judgement of 30 November 1995, a plenary sitting of the Court ruled that allowing minors to perform domestic labour was unconstitutional.

It should be noted that, with regard to child labour, Panama adopted Executive Decree No. 19 of 12 June 2006, listing dangerous jobs, in an effort to combat the worst forms of child labour. Article 3, paragraph 11, of the decree indicates that domestic service in the homes of third persons comes under this heading when the minor must "perform domestic service tasks,

which may or may not entail sleeping at the home of third persons, without rest periods or with limited rest periods, for long days in succession, without set hours; look after persons or goods and hold many responsibilities for which little or no pay is received and which are not suited to the minor's age and maturity".

In addition, article 501, paragraph 5, of Part III of the Family Code, concerning ill-treated minors, states that ill-treatment exists when the minor is employed in prohibited or immoral work, or in work which endangers the minor's life or health. It is then regarded as a criminal offence, and reference must be made to Part V of the Criminal Code, concerning offences against the family and marital status, and Chapter V, concerning domestic violence and the ill-treatment of children and young people.

#### *General situation of child labour in Panama*

The Ministry of Social Development, through the Department of Children and Adoption, approaches the issue of child labour as a social problem which violates the human rights of children and young people.

It is pursuing a two-pronged strategy to deal with the issue: action is taken by the Department of Children, as the lead institution which protects the human rights of children and young people, and by the Committee for the Eradication of Child Labour and the Protection of Young Workers.

The Department of Children is implementing various schemes to prevent, deal with and eradicate child labour.

#### *Street sweeps*

A team of social workers and psychologists from the Department of Children regularly scours the main areas of Panama City on the lookout for street children engaged in child labour.

These rounds, which are made twice a month, have yielded the following results:

January	5 children
February	4 children
March	2 children
April	3 children
May	10 children
June	5 children
July	3 children
August	4 children

September	5 children
October	2 children
November	7 children
December	5 children

Once the children have been found, their families are contacted with a view to their enrolment in the Safe Steps Programme or in the counselling programme.

#### *Hotline 147*

People can ring this helpline to report working street children so that they may be approached.

#### *Safe Steps Programme*

This programme offers comprehensive care tailored to the specific needs of each child at risk and those of their families, the aim being to strengthen the role of the family and promote harmonious relations at home as a means of ensuring respect for the rights of the child established in the Convention on the Rights of the Child.

At present there are three Safe Steps Programmes in place in: Calidonia, catering for 26 children; San Felipe, catering for 26 children; and in San Miguelito, catering for 47 children.

The Safe Steps Programme allows the Ministry of Social Development to provide comprehensive services to children and their families through:

- Interviews (99 in total)
- Home visits and monitoring of families (a total of 99 visits)
- Visits to the schools attended by the children (twice a month)
- Tutoring (provided on a daily basis to 99 children)
- Afternoon snacks (provided on a daily basis to 99 children).
- Counselling for the parents or guardians of the children (family counselling focuses on developing the emotional awareness of the family members through meetings designed to promote a change in attitude in the children and their relatives. Similarly, the fathers of these families are encouraged to train in income-generating activities enabling them to satisfy the basic needs of their family. A considerable number of parents and guardians are receiving monthly guidance sessions).

*Programme to promote education*

Under an agreement with private companies to develop a policy of corporate social responsibility, the ASSA insurance company is providing financial support for the education of five children and adolescents through annual scholarships amounting to B250,000 each, thereby ensuring that their social and academic progress is not disrupted.

*Committee for the Eradication of Child Labour and the Protection of Young Workers (CETIPPAT)*

Under Executive Decree No. 37 of 21 June 2005, which established the Committee, the Ministry of Social Development and the Ministry of Labour jointly supply the Committee with technical secretariat services.

The main functions of the Committee are to:

- Guide, coordinate and consolidate policies and programmes to prevent and eradicate child labour, protect young workers and improve their living and working conditions
- Devise, monitor and evaluate the National Action Plan for the Eradication of Child Labour and the Protection of Young Workers
- Coordinate national, government and civil-society bodies and instruct and advise them on how to incorporate the National Action Plan into their respective areas of responsibility
- Coordinate the allocation and assignment of human, material and financial resources by the government institutions responsible for executing the National Action Plan; coordinate operative plans and budget appropriations.

Schemes run by CETIPPAT over the last two years include:

*UNION FENOSA-CETIPPAT Day of Solidarity Programme*

Since 2007, this programme has been sponsoring the “Complete your year” scheme, which provides 120 young workers with three-year scholarships in order that they may complete their education. Twenty per cent of these scholarship holders come from the Ngöbe-Bugle *comarca*. At the end of the three years of upper secondary education, the 17 pupils with the best academic results will be awarded a university scholarship for five years. The socialization and academic progress of all the youngsters covered by the programme are monitored and assessed.

*IFARHU project to eradicate child labour*

The Institute for the Training and Use of Human Resources (IFARHU) has set up a project to eradicate child labour by means of awarding education grants to children at risk, provided that the child’s parents or guardians agree to withdraw the child permanently from any work he or she was doing before the award of the grant.

The purpose of this scheme is to promote education as a means of eradicating poverty by providing economic support to children and young people throughout the country.

In order to provide a basis for selection, the Ministry of Labour, Casa Esperanza and the National Council of Organized Labour, among others, send their lists of candidates for the grants to the Ministry of Social Development which, as the Committee's technical secretariat, passes them on to IFARHU, thereby ensuring the continuity of the grant-holders' social and academic progress.

In 2006, a total of 2,174 scholarships were awarded, distributed as follows:

Bocas del Toro	149
Chiriquí	205
Coclé	80
Colón	19
Darién	97
Herrera	198
Los Santos	133
Panamá	755
Veraguas	159
<i>Comarca</i> Ngöbe-Bugle	377
<i>Comarca</i> Emberá	2

In 2007, some 2,852 scholarships were awarded, distributed as follows:

Bocas del Toro	73
Coclé	361
Colón	99
Chiriquí	566
Darién	106
Herrera	48
Los Santos	336
Panamá	811
Veraguas	318
<i>Comarca</i> Emberá	46
<i>Comarca</i> Ngöbe-Bugle	88

### **Question 21**

A visa signifies a State's prior authorization that a foreign national of another State that does not have an agreement abolishing the visa requirement may enter the country at duly authorized entry points and may remain in the country for a specified period of time, subject to the completion of certain legal formalities.

Accordingly, any visa constitutes an authorization to enter the country legally, and its purpose is not to breach national laws or the international agreements ratified by Panama. If persons who have applied for a visa on their own behalf or on behalf of other persons use them to engage in illegal activities, they incur the relevant statutory administrative and criminal penalties.

As far as artists' visas are concerned, it is important to bear in mind the following points and legal provisions.

### **Constitutional and legislative provisions**

#### **The Constitution**

Article 17 of the Panamanian Constitution states that the authorities of the Republic have a duty to protect the life, honour and property of its nationals wherever they may be and of foreigners within its jurisdiction. Article 70 prohibits work by minors under the age of 18. (Act No. 15 of 6 November 1990, by which Panama adopted the Convention on the Rights of the Child, prohibits work by minors under the age of 14 and night work by minors under the age of 16.)

#### **Migration Act**

Decree Law No. 16 of 30 June 1960 and the amendments thereto stipulate that any foreigner who enters the national territory as a tourist may change his or her immigration status subject to the completion of certain requirements explicitly established by law. In this connection, article 18 of the Act of 31 August 1999 stipulates that natural or legal persons who wish to employ artists in Panama must supply the Department of Migration with the following:

- (a) A valid passport and proof of legal entry;
- (b) Evidence that the person is over 18 years of age;
- (c) A ticket valid for one year;
- (d) Confirmation of the premises or the company where the person will be employed;
- (e) An employment contract registered with the General Labour Department of the Ministry of Work and Social Development;
- (f) A work permit issued by the Ministry of Labour which predates the visa;
- (g) Health certificates (HIV and VDRL tests);

- (h) Police record;
- (i) A cheque in the amount of B100.00 made out to the National Treasury;
- (j) A cheque in the amount of B250.00 made out to the Ministry of Government and Justice.

An artist's visa thus permits legal residence in the national territory; it is issued by the Department of Migration and Naturalization of the Ministry of Government and Justice and it must not be used for the trafficking and sexual exploitation of migrants. The Department of Migration is authorized to cancel a visa in the event that Panamanian law is violated.

The Department regularly inspects nightclubs and places of public entertainment to check their compliance with migration legislation, as criminal liability may be incurred if a violation constitutes a criminal offence.

### **Criminal legislation and application of the law**

At the beginning of 2007, under the first judgement to be handed down under Act No. 16 of 31 March 2004, which punishes trafficking for the purposes of commercial sexual exploitation, a nightclub owner was sentenced to five years' imprisonment. A second case is currently before the courts. The Government of Panama works with other Governments and with Interpol to combat international cases of people trafficking and extradited five paedophiles to the United States of America during the period 2007-2008. The information and cooperation provided by the Department of Migration was vital in tracking down and arresting these persons.

Act No. 16 of 31 March 2004 certainly puts Panama at the forefront of efforts to prosecute and deal with crimes such as procuring, sexual trafficking and sex tourism. It lays down penalties ranging from 3 to 10 years' imprisonment and it has started to produce results. It should be noted that the new Criminal Code which came into force in Panama on 18 May 2007 establishes more severe penalties for the perpetrators of such offences and encompasses other criminal conduct.

Part II, Chapter II, of the Code is entitled "Corruption of minors, commercial exploitation and other criminal conduct". Articles 176 to 182 thereof define unlawful conduct in detail and establish the penalties for it.

Article 177, for example, provides for a prison sentence of four to six years for anyone who facilitates, promotes, contracts or in any way organizes the entry into or departure from the country or the movement within the national territory of a person of either sex in order to force that person to engage in illegal paid sexual activity or sexual slavery. This penalty is increased by half when "the act is carried out by means of deception or coercion or by the theft or retention of migration or personal identification documents, or by recruitment in conditions of vulnerability" or when "the agent offers these services in the form of commercial sexual exploitation".

Penalties are much steeper when minors, disabled persons or persons incapable of consent are involved (10 to 15 years' imprisonment).

It is important to note that under article 248 of the Criminal Code, which defines the offence of money laundering, anyone who personally or through other persons receives, deposits, negotiates, transfers or converts currency, securities, goods and other financial resources which may be reasonably assumed to have been derived from trafficking and commercial sexual exploitation is liable to 5 to 12 years' imprisonment.

### **Draft decree law on migration**

This decree law establishes the National Migration Service and introduces other measures.

At the time this report was submitted, a decree law had been drafted which the Cabinet Council planned to submit in order to introduce new migration legislation that is in keeping with national reality. The draft is a response to Panama's need for a migration policy that encourages orderly, selective and safe migration that promotes the country's economic, social, cultural, scientific and professional development and strengthens the capacity of the institution responsible for supervising migration, while also recognizing and protecting the human rights of immigrants, especially those at risk.

The draft establishes more stringent administrative penalties for employers who retain foreigners' documents; the penalties for serial offenders are heavier still and include the suspension or cancellation of the licence to hire artists, without prejudice to the criminal liability of the agent, which was discussed in previous paragraphs. The draft likewise provides for measures to penalize international transport companies that carry persons who do not possess the proper visas and permits, measures to protect foreign victims of trafficking and the establishment of a specialized unit to deal with these cases.

### ***Question 22***

The following measures have been taken:

- Act No. 27 of 24 July 1997 on the protection, promotion and development of handicraft industries, Chapter VIII of which protects the handicrafts of indigenous peoples.
- Act No. 35 of 25 July 2000, creating the Foundation for Indigenous Peoples' Festivals. The Foundation's purpose is to highlight the cultural wealth of indigenous peoples by means of festivals and national and international fairs of agriculture and forestry, crafts, culture, education, tourism, seafaring, traditional medicine and trade in general. This Act has not entered into force.
- Executive Decree No. 274 of 31 August 2007, which establishes the Department of Bilingual Intercultural Education within the Ministry of Education in order to develop bilingual intercultural education at all levels and in all types of education, in order to ensure that culturally distinct peoples receive high-quality, culturally relevant education with equity. The Decree has been approved and is expected to enter into force in 2008.



- Act No. 4 of 29 January 1999 on equal opportunities for women, Chapter X of which encourages the development of programmes and materials for bilingual literacy training for indigenous women in order to boost their self-esteem. Chapter XII on interest groups has a section IV that deals with promoting equal opportunities for indigenous women, with emphasis on income generation, skills improvement, literacy, recognizing indigenous cultures within the gender perspective, safeguarding cultural heritage in indigenous lands and, lastly, on reflecting the multicultural and multi-ethnic nature of the Panamanian nation in national laws and in the legal system.

### ***Question 23***

*Measures taken to guarantee the right of indigenous peoples to their ancestral lands, in particular the communities of Naso and Bribri*

A bill is in the process of adoption which allegedly does not give indigenous communities the same rights as indigenous *comarcas*.

A framework law which is at the preliminary draft stage will permit the protection of indigenous lands which are not yet legally safeguarded (i.e. those of the Emberá and Wounaan in collective lands, of the Ngöbe, Naso and Bribri which are located in Bocas del Toro province and of the Kuna from the Baya and Bucuru communities in the Darién National Park). The Executive is currently working on this preliminary bill, which will be referred to the Cabinet before being submitted to the Assembly of Deputies.

#### *The Framework Act and the Comarcas Act*

In fact, the Framework Act merely awards the land to indigenous peoples through the procedures it establishes; it does not mention the traditional authorities or establish special jurisdiction along the line of the *comarcas*, and it is silent on education and the administration of justice.

Notwithstanding, the Framework Act is feasible in the case of collective lands, as they are not contiguous. It is similarly useful for the Ngöbe, because once its lands are awarded to it, they could be annexed to the Ngöbe Bugle *comarca*. A *comarca* is the most acceptable solution for the Kunas of Darién, the Bribris and the Nasos on account of their social and cultural cohesion and the contiguity of their territory.

### ***Question 24***

The Panamanian report relies on information supplied and discussed by a team of civil servants who are experts in their field. The following bodies took part: the Ministry of Government and Justice, the Ministry of Social Development, the Public Prosecutor's Office, the judiciary, the Electoral Tribunal, the Ministry of Education, the Ministry of Economy and Finance, Panama University, the National Assembly and the Ombudsman's Office.

Once the report had been presented it was circulated to all the institutions that had taken part in its drafting.

The Panamanian Government is sure that representatives of civil society who wish to learn what is in the report are in fact acquainted with its contents; to date, however, the technical team responsible for writing it has not received a single comment, favourable or adverse, from any representative of civil society.

Panama wishes to inform the Human Rights Committee that it realizes that reports must be drafted jointly with various representatives of civil society in order to ensure that such reports are objective. In fact it was initially the State party's intention to proceed in this manner; however, time pressure made this impossible.

Panama undertakes in future to look for mechanisms to ensure that NGOs participate constructively in the drafting of these reports, so that supervisory systems, the State and civil society may benefit from this experience.

**At the initiative of the Panamanian Government, a workshop was held from 31 July to 4 August 2006 on institutional awareness-raising and the drafting of reports for treaty bodies. It was sponsored by the Office of the United Nations High Commissioner for Human Rights and was attended by most of the officials who subsequently participated in the drafting of the Panamanian report.**

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