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REPORT ON THE SITUATION OF FREEDOM OF EXPRESSION IN PANAMA

OFFICE OF THE SPECIAL RAPPOREUR
FOR FREEDOM OF EXPRESSION

**GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES**

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**REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ON THE
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REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ON THE SITUATION OF FREEDOM OF EXPRESSION IN PANAMÁ

I. INTRODUCTION AND PURPOSE OF THE REPORT

1. To build and grow democratic societies, the right to freedom of expression must be construed as endowing every member of society with a voice in the decision-making process. It must be perceived as a means to achieve a more tolerant and stable society and to respect a human being's inherent dignity by allowing every person to express his/her views and exchange ideas, opinions and information. Freedom of expression, therefore, provides the framework that enables the conflicts inherent in every society to be worked out without rending the social fabric and thus preserves the balance between stability and change. As the Inter-American Court of Human Rights has written, freedom of expression allows open discussion of moral and social values and facilitates political discussion, which is crucial for democratic values.¹ Therefore, the collective, stabilizing dimension of democracy is lost when freedom of expression is obstructed, and democratic government becomes an empty institutional arrangement devoid of the social participation essential in a democracy.

2. Freedom of expression has been more zealously protected in recent years precisely because of the pivotal role it plays in building stable, participatory democracies. But full exercise and observance of the right to freedom of expression requires governments that are fully committed to its observance, proper laws for its defense, and an independent and effective judiciary that can guarantee it.

3. In past decades, *de facto* governments posed a serious threat to freedom of expression in the hemisphere. Those unconstitutional regimes unlawfully suspended the citizenry's rights and guarantees and pursued, detained or killed those critical of the government in power. Since the return to the democratic system of government, respect for freedom of expression has improved considerably. However, many of these democracies still retain authoritarian laws or practices that are the vestiges of past *de facto* governments. Such laws and practices retard society's progress by not allowing its members to freely receive and exchange information and views.

4. In a number of Latin American democracies, the public institutions charged with monitoring the conduct and functions of the authorities vis-à-vis the citizenry are weak. For example, in many countries, the judicial branch of government has not conducted itself in a manner such that it could be said to be independent of the executive branch. In such cases, the judiciary has either refrained from punishing officials guilty of abuses and/or corrupt practices or has applied mild sanctions, thus obstructing exhaustive investigation of cases against government institutions or other sectors of economic power. In those countries, the press and other institutions of civil society have become the principal means by which the action of the State is monitored and publicized. Because these institutions expose illegal, abusive or corrupt practices, they frequently become the target of attack and persecution.

5. The Special Rapporteur considers that democracy is in peril when, in order to suppress criticism from their citizens, democratic institutions use the law to restrict freedom of expression.

¹IACtHR, Baruch Ivcher Case, Series C No.74, Judgment of February 6, 2001, par. 143(e).

6. Likewise, poverty and social marginalization of large sectors of the population in the hemisphere also affect the exercise of a wide range of human rights, including freedom of expression. Frequently their voices are, for all intents and purposes, silent. It is difficult for these voices to become part of a broad-based give-and-take of ideas and opinions and they have little means of getting the information needed to grow and develop as equals with the rest of a democratic society. When women and indigenous peoples are the victims of discrimination, the right to freedom of expression is breached: the failure to mainstream these sectors into public arenas of discourse deprives society as a whole of its right to hear the views of groups that in many countries represent the majority of the population. The mass media and active political participation are vehicles of individual freedom of expression that can be used to correct the dire inequalities with which many sectors of society must contend in a democratic environment.

7. After three visits to the Republic of Panama, the Office of the Special Rapporteur for Freedom of Expression presents this report on the situation of freedom of expression in that country. The analysis contained in the report examines the provisions, laws and practices that limit the full and uninhibited right to freedom of expression upheld in the provisions and jurisprudence of the inter-American human rights system.

8. It is important to note that the study of Panamanian laws presented herein does not pretend to be an exhaustive, full analysis of all norms relating to the exercise of freedom of expression. Having said this, the laws examined in the report are those that, in the opinion of the Office of the Special Rapporteur, need to be immediately revised to bring them in line with the standards in force in this hemisphere for the protection of human rights.

9. The purpose of this report, therefore, is to assist the government of Panama with the adoption of progressive measures that bring Panama's domestic laws in line with the principles set forth in Article 13 of the American Convention on Human Rights as regards freedom of expression, and the Declaration of Principles on Freedom of Expression. The report is based on information and documents compiled and examined in accordance with this Office's routine procedures, and on the opinions and wealth of data compiled before, during and after its three visits to Panama.

10. The Office of the Special Rapporteur would like to express its gratitude to the Panamanian authorities for their willingness to allow it to conduct its work with complete independence and autonomy, and is grateful for its readiness to cooperate in the search for solutions to the problems posed and to respond to the specific recommendations made during the visits. The Office of the Special Rapporteur would also like to thank the representatives of civil society, the media, and especially journalists for the important information they provided during the visits.

11. In addition, the Office of the Special Rapporteur would like to thank the remarks and observations that the Republic of Panama was good enough to make to this Report, which had been timely submitted, as a preliminary report. In each chapter, reference is made to said remarks and observations. Notwithstanding, the Office of the Special Rapporteur highlights that from the Report submitted by the State of Panama, there arises that *"it is consenting that from the rules of interpretation of the American Convention in light of the "Pro Homine" principle, the Organs of the Inter-American System for the Protection of Human Rights, including the Office of the Special Rapporteur for Freedom of Expression...., be able to consider article 13 of the San*

Jose Treaty in accordance with other international documents, when these present a higher standard of protection, as it is the case of the Declaration of Principles on Freedom of Expression.”

12. It is also important, in the Office’s opinion, that in many of the aspects developed in this Report, the Republic of Panama has expressed its disposal to maintain an open dialogue with the Office of the Special Rapporteur, that it has stated its gratitude for the recommendations, and that it has expressed that some of them will be taken into account for a possible study and interpretation.

II. GENERAL FRAMEWORK OF THE REPORT

II.a. Creation and mandate of the Office of the Special Rapporteur for Freedom of Expression

13. One of the chief concerns of the Inter-American Commission on Human Rights (IACHR) is freedom of expression in the hemisphere. Given the many requests from large sectors of civil society in the Americas, the IACHR created the Office of the Special Rapporteur for Freedom of Expression. It is a permanent office, with functional autonomy and its own budget, operating within the legal framework of the Inter-American Commission on Human Rights. The Office of Special Rapporteur for Freedom of Expression has the support of the Heads of State and Government in the hemisphere. On the occasion of the Second Summit of the Americas, held in Santiago, Chile in April 1998, they reaffirmed the importance of freedom of expression and commended the establishment of the Office of the Special Rapporteur for Freedom of Expression.

14. At the Third Summit of the Americas, held in Quebec, Canada, the Heads of State and of Government ratified the mandate of the Office of the Special Rapporteur, adding that they would “[c]ontinue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to ensure that national legislation on freedom of expression is consistent with international legal obligations.”²

15. The following are among the objectives of the Office of the Special Rapporteur: to stimulate an awareness of the importance of freedom of expression and information in the hemisphere, given the fundamental role it plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected and violations reported; and to make specific recommendations on freedom of expression and information to member States to promote adoption of progressive measures to strengthen this right.

16. At its ninety-seventh session, the Inter-American Commission on Human Rights appointed Dr. Santiago Canton to serve as Special Rapporteur for Freedom of Expression. His mandate was to analyze and report on the extent to which the laws and practices in the member States were consistent with their obligations under the American Convention on Human Rights in the matter of freedom of expression. In March 2002, the Inter-American Commission on Human Rights (IACHR) designated a new Special Rapporteur for Freedom of Expression, Dr. Eduardo A. Bertoni, who undertook the functions of his office in May 2002.

17. The American Convention and the constitutions of the member states uphold freedom of expression as one of the pillars upon which democratic governance and pluralistic societies rest. Accordingly, the Special Rapporteur's function is to promote and protect respect for the international laws and norms on freedom of expression by conducting on-site visits to observe the evolution of that right in each member state and make recommendations to the respective governments whenever their domestic laws are in direct conflict with the norms set forth in Article 13 of the American Convention.

II.b. The First Visit to Panama

² Third Summit of the Americas, April 20-22, 2001, Quebec, Canada.

18. As Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Dr. Santiago A. Canton visited the Republic of Panama from July 10 through 14, 2000, at the government's invitation and in response to subsequent requests from various sectors of Panamanian society.

19. During the five days he spent in Panama, the Special Rapporteur followed a program of activities and meetings that included a visit with the President of the Republic, the Honorable Mireya Moscoso, and other officials of the Panamanian State; directors of the media; journalism trade unions; associations of owners of media outlets and of persons working in the communications media; independent journalists; academic institutions; representatives of human rights organizations and other civil society organizations, all in order to make contacts, compile information and analyze the situation of freedom of expression in Panama.

20. During the visit with the President, she expressed her determination to promote widespread, secure freedom of expression in Panama and to cooperate with the Office of the Rapporteur for Freedom of Expression in any way necessary to achieve that end.

21. During this first visit, the Office of the Special Rapporteur observed and took note of the Legislative Assembly's willingness to institute the President's proposed reforms. With this positive attitude, the amendment of Panama's laws to bring them in line with the American Convention on Human Rights should continue.

II.c. The Second Visit to Panama

22. Special Rapporteur Santiago Canton visited Panama a second time on June 6 through 8, 2001, as a member of the delegation from the Inter-American Commission on Human Rights. It is worth to highlight that on that occasion the Government of Panama had invited the Commission to conduct an on-site visit to observe the general human rights situation in Panama.

23. During this visit, the Rapporteur had an opportunity to take part in a series of meetings held with diverse sectors of Panamanian society, including the President of the Republic, the Honorable Mireya Moscoso; the chairmen of the Legislative Assembly's Human Rights Commission and Indigenous Affairs Commission; the then President Magistrate of the Supreme Court and with other high-ranking State authorities from the executive, legislative and judicial branches of government and other State offices. The Commission also met with the Deputy Minister of Foreign Affairs; with the Minister of Government and Justice; with the Deputy Minister of Labor and Labor Development; with the Minister for Youth, Women, Children and Family; with the Attorney General of the Nation; and with the director of the National Police. The Commission also conferred with the magistrates on the Electoral Tribunal.

24. The Special Rapporteur and the Commission were disturbed to find that in the interim between the Rapporteur's first and second visit, no progress had been made to more fully guarantee the free exercise of the right to freedom of expression. Indeed, reports were received about an increase in the number of criminal cases brought against social communicators. However, during this second visit, the Panamanian State made a commitment to the Special Rapporteur that the laws restricting freedom of expression would be repealed before the end of President's term of office.

II.d. The Third Visit to Panama

25. The Special Rapporteur for Freedom of Expression, Eduardo Bertoni, visited Panama on April 14 and 15, 2003. The visit was in response to an invitation extended by the Office of the Ombudsman of Panama to participate in the Forum on "Freedom of Expression and Democracy."

26. Although the specific objective of the visit was the above-named Forum, the Rapporteur was nonetheless able to hold meetings with the Honorable President of the Supreme Court; with the Ombudsman; with the Special Delegate for Freedom of Expression attached to the Ombudsman's Office; with editors of the mass media; journalists' unions (CONAPE; the Journalists' Forum, the Journalists' Trade Union; the National Council of Journalism); the National Bar Association; independent journalists; and other elements of civil society. The purpose was to compile information and update information previously received.

27. The Rapporteur appreciates the Ombudsman's decision to create the position of Special Delegate for Freedom of Expression within the Ombudsman's Office. The report that office prepared on "Democracy, Freedom of Expression and Libel and Slander Suits," completed in December 2002, contains recommendations that demonstrate that office's willingness to make the changes that the IACHR and the Office of the Special Rapporteur for Freedom of Expression had recommended in the past.

28. However, notwithstanding the recommendations made by the Ombudsman's Office, during the visit, the Special Rapporteur found that no legislative progress had been made on the issues that government authorities at the highest levels had told the IACHR and the Office of the Special Rapporteur in previous visits, would be made.

29. The one exception was enactment of Law No. 6, of January 22, 2002, which sets out provisions on transparency in public affairs, establishes the remedy of *habeas data* and contains other provisions related to access to public information. But while the law was enacted, the Office of the Special Rapporteur found that there have been setbacks in its implementation, which will be discussed at greater length in a separate chapter.

III. THE INTER-AMERICAN SYSTEM AND THE RIGHT TO FREEDOM OF EXPRESSION

30. The American Convention on Human Rights recognizes the right to freedom of thought and expression in its Article 13, which reads as follows:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

31. Other legal instruments that recognize the right to freedom of expression include the Universal Declaration of Human Rights, United Nations General Assembly Resolution 59(1), Resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the International Covenant on Civil and Political Rights, to name just a few.

32. During its 108th regular session, the Inter-American Commission on Human Rights approved the Declaration of Principles on Freedom of Expression on October 19, 2000. The product of more than a year of study, analysis and inclusive debate with various civil society organizations, the Declaration of Principles on Freedom of Expression is fundamental for the interpretation of Article 13 of the American Convention on Human Rights. Its approval constituted an acknowledgment of the importance of protecting freedom of expression in the Americas. The Declaration sets out the international standards for a more effective defense of the exercise of this right. When the Commission adopted this document, it did so mindful of the fact that the consolidation and development of democracy depends upon freedom of expression and out of its conviction that any obstacle to the free give-and-take of ideas and opinions limits freedom of expression and the effective development of the democratic process.³

33. Full recognition of freedom of expression is a guarantee that is essential to ensuring the rule of law and democratic institutions. Time and time again the Inter-American Court of Human Rights has underscored the importance of this right and has written that:

³ See text of the Declaration of Principles on Freedom of Expression in the Annexes.

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁴

34. For its part, the Inter-American Commission on Human Rights has held that in order to ensure full exercise of the right to freedom of thought and expression, the member states must do away with any measures that discriminate against individuals, depriving them of full participation in the political, economic, public and social life of their country. The American Convention on Human Rights casts the individual's right to non-discrimination as one of the basic pillars supporting strong, functioning democratic systems in the hemisphere.⁵

35. Lack of participation deters broad-based development of democratic and pluralist societies and exacerbates intolerance and discrimination. The inclusion of all sectors of society in communications-related, decision-making and development processes is essential if their needs, views and interests are to be considered when policies are crafted and decisions are made. The Inter-American Court has held that:

[A] democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest possible access to information by society as a whole [...] [I]n the American Convention [...] the right of each individual to express himself freely and that of society as a whole to receive information [must] be scrupulously respected.⁶

36. The Court highlighted the dual dimension of freedom of thought and expression and captured the sweeping scope of this right as a tool enabling broad-based participation of the various sectors of society in the development and strengthening of the hemisphere's democracies.

In its individual dimension, freedom of expression goes further than the theoretical recognition of the right to speak or to write. It also includes and cannot be separated from the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible. When the Convention proclaims that freedom of thought and expression includes the right to impart information and ideas through "any medium," it emphasizes the fact that the expression and dissemination of ideas and information are indivisible concepts. This means that restrictions that are imposed on dissemination represent, in equal measure, a direct limitation on the right to express oneself freely. The importance of the legal rules applicable to the press and to the status of those who dedicate themselves professionally to it derives from this concept.⁷

In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication. It includes the right of each person to seek to communicate his own views to others, as well as the right to receive opinions and news from others. For the average citizen it is just as important to know the opinions of others or to have access to information generally as is the very right to impart his own opinions.⁸

⁴ IACtHR, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism" (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, Series A No. 5, November 13, 1985, par. 70.

⁵ See American Convention on Human Rights: Chapter I, General Obligations; Article 1: Obligation to Respect Rights; Chapter II, Civil and Political Rights; and Article 13, Freedom of Thought and Expression.

⁶ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra*, par. 69.

⁷ *Ibid.*, par. 31.

⁸ *Ibid.*, par. 32.

The two dimensions mentioned ... of the right to freedom of expression must be guaranteed simultaneously. One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor. It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view.⁹

37. Both the Court and the Commission have had occasion to interpret Article 13 in their jurisprudence on various cases, among them: Francisco Martorell v. Chile¹⁰, Héctor Felix Miranda v. Mexico¹¹, Horacio Verbitsky v. Argentina¹², Víctor Manuel Oropeza v. Mexico¹³, Baruch Ivcher Bronstein v. Peru¹⁴ and The Last Temptation of Christ v. Chile,¹⁵ among others.¹⁶

38. Both international bodies for the protection of human rights have written documents and advisory opinions that concern freedom of expression and that interpret the scope of articles 13 and 14 of the American Convention on Human Rights. Prominent among these are the following: the Advisory Opinion of the Inter-American Court of Human Rights on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism;¹⁷ the Court's Advisory Opinion on Enforceability of the Right of Reply or Correction (Articles 14(1), 1(1) and 2 of the American Convention on Human Rights);¹⁸ the Report of the Inter-American Commission on Human Rights on the Compatibility of "Desacato" Laws with the American Convention on Human Rights,¹⁹ and the Declaration of Principles on Freedom of Expression, which the Commission adopted in October 2000.²⁰

39. The case law and documents of the Court and the Commission clearly recognize the social dimension of the right to freedom of thought and expression. While it has an individual dimension, it also has another, much broader dimension having to do with the social framework reflected by the audience, i.e., all those who seek and receive opinions and information coming from various sources. So a violation of the right to freedom of thought and

⁹ *Ibid.*, par. 33.

¹⁰ IACHR, Report No. 11/96, Case 11.230, Annual Report of the IACHR 1996.

¹¹ IACHR, Report No. 50/99, Case 11.739, Annual Report of the IACHR 1999.

¹² IACHR, Report No. 22/94, Case 11.012, Annual Report of the IACHR 1994.

¹³ IACHR, Report No. 130/99, Case No. 11.740, Annual Report of the IACHR 1999.

¹⁴ Ivcher Bronstein, *supra*.

¹⁵ IACtHR, "Last Temptation of Christ" Case (Olmedo Bustos *et al.* v. Chile), Series C No.73, Judgment of February 5, 2001.

¹⁶ In this regard, see the summary of Jurisprudence in the Annual Report of the Special Rapporteur for Freedom of Expression, 2002.

¹⁷ "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism," *supra*.

¹⁸ See IACtHR, Enforceability of the Right of Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/98, August 29, 1986.

¹⁹ See IACHR, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, OEA/Ser.L/V/II.88 Doc.9 rev. (1995), pp. 198 to 212.

²⁰ See text of the Declaration of Principles on Freedom of Expression and interpretation in Volume III of the Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.111. Doc.20 rev. (2000), pp. 11 to 31.

expression constitutes a violation of an individual right and a violation of a collective right to receive any information and to know what others are thinking. So society as a whole is a victim when freedom of thought and expression is violated.

40. The provisions that refer specifically to freedom of thought and expression must be taken in combination with other more general provisions embodied in the American Convention, such as articles 1 and 2 thereof. Article 1(1) of the Convention states that the States parties to the Convention undertake to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction. Thus, a State party has two obligations: one is the duty to respect the rights and freedoms recognized in the Convention, and the other is the duty to ensure their free and full exercise.

41. As to the obligation to respect the rights and freedoms recognized in the Convention, the Inter-American Court of Human Rights has written that:

Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention... [A] State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.²¹

42. As for the second obligation, i.e., to "ensure" the free and full exercise of the rights recognized in the Convention, the Inter-American Court of Human Rights has held the following:

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.²²

43. Article 2 of the American Convention provides that States have an obligation to adopt "such legislative or other measures as may be necessary to give effect to those rights or freedoms", where the exercise of any rights or freedoms is not already ensured.²³

44. Panama ratified the American Convention on Human Rights on June 22, 1978, and is therefore obligated to respect and ensure the rights recognized therein, including the right to freedom of thought and expression.

²¹ See IACtHR, Velásquez Rodríguez Case, Series C No. 4, Judgment of July 29, 1988, paragraphs 169 and 170.

²² *Ibid.*, par. 166.

²³ Article 2 of the American Convention reads, *verbatim*, as follows: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

IV. ANALYSIS OF FREEDOM OF EXPRESSION IN PANAMA

IV.a. Historical Summary

45. Article 27 of the 1904 Constitution provided extensive protection for freedom of thought and expression in Panama. That Constitution stipulated that “[a]ny person may express his thoughts freely, in speech or in writing, in print or in any other medium, without being subject to prior censorship, whenever they concern official acts by public officials. However, legal liability shall be incurred when any person uses any medium to slander an official’s character.”

46. Repealing the 1904 Constitution, Article 39 of the 1941 Constitution added language to Article 27 introducing the concept of limitation of freedom of thought and expression with regard to the protection of public law and order: “But there shall be legal consequences when any of these media are used to attack the reputation or honor of persons or the security of society or public tranquility.” This provision was built into Article 37 of today’s Constitution, the Political Constitution of the Republic of Panama, as amended by the Reforms of 1978, by the Constitutional Act of 1983, and by the Legislative Acts of 1983 and 1994.

47. With the 1968 coup d’état, the National Guard deposed the constitutionally elected government of Dr. Arnulfo Arias Madrid and determined that everything mandated in the Constitution would henceforth be done by decree approved by the Cabinet Council and Ministers of State. As Panama shifted between democratically elected government and military dictatorship between 1968 and 1990, cabinet decrees gradually chipped away at the right to freedom of thought and expression. Many of the decree laws are still in effect in Panama and are examined in this analysis.

48. When running as a candidate for the presidency, Mrs. Mireya Moscoso set the following objectives, among others, for her administration:

a. The so-called gag laws (*leyes Mordaza*) and the contempt provisions (*desacato*) that impair exercise of freedom of expression will be repealed and replaced by a body of law that provides effective protection for public liberties, so as to ensure to the citizenry the full exercise and enjoyment of their rights...

c. Modern legislative reform will be pushed to strengthen and modernize the institutions that provide guarantees of rights, so that the citizenry has effective procedural mechanisms to put a stop to any abuse or threat to citizens’ freedoms and human rights (introduction of new remedies like *habeas data*, *amparo* relief for constitutional guarantees against the acts of private individuals, a suit seeking compliance, preventive, corrective and redress-related *habeas corpus*, and so on).²⁴

49. A number of committees with a mandate to evaluate the status of freedom of expression at the national level -namely the Committee to Evaluate Press-related Laws (February 1999), the Report of the Committee to Protect Journalists on the Situation of Freedom of Thought and Expression in Panama (March 1999), and the Final Drafting Committee for the Penal and Procedural Codes (April 1999) and others- have made recommendations to repeal laws that restrict freedom of expression in Panama.

50. In its 1999 annual report, the Office of the Special Rapporteur cited Panama as one of the States where progress had been made in the area of freedom of expression, especially with the December 1999 enactment of Law 55, a bill introduced by the Administration

²⁴ *Unión por Panamá*, “Nuestro Compromiso para el Cambio” [Our Commitment to Change], Government Plan (1999).

of President Mireya Moscoso that repealed articles 15, 16, 17 and 19 of Law 11 (1978) and Law 68 (1978).

51. The provisions of Law 11 allowed the Ministry of Government and Justice to levy pecuniary fines and even shut down media outlets. The law also stipulated that both the editor and the author of an offending publication or criticism would be jointly and severally liable. Under Law 55, however, the editor of an offending anonymous publication is the liable party, but not so the editor of a publication that identifies its sources. This law also strikes down Law 68, which created the Technical Board of Journalism and allowed the Ministry of Government and Justice to control the practice of journalism through the issuance of licenses.

52. Articles 3 and 4 of Law 55 (1999) also indicate a commitment on the part of the administration to introducing other bills to modernize Panama's domestic laws to bring them in line with international standards on freedom of thought and expression.

53. However, according to reports received, since 2000, when the third visit took place, freedom of expression has come under renewed threats from a number of public officials, who continue to use the contempt, libel and slander laws to silence some media outlets and social communicators. According to information received, more than 70 journalists are now facing judicial proceedings for the crimes of libel and slander.²⁵

54. In December 2000, Panama's Legislative Assembly voted down the bill that would have wiped the *desacato* laws off the books. The Office of the Special Rapporteur received a letter from Panama's Ombudsman at the time, Italo Isaac Antinori-Bolaños, expressing his concern over the decision taken by the Committee on Government, Justice and Constitutional Matters that made it impossible to eliminate the *desacato* laws from Panama's legal code once and for all. As has been stated time and time again, these laws are contrary to freedom of expression. Furthermore the action taken is at odds with what President Mireya Moscoso told the Special Rapporteur during his visit to Panama in July 2000. In this sense, it is important to highlight that the Republic of Panama, in its remarks and observations to this Report when it was submitted as a preliminary report, has expressed that regarding the *desacato* laws the Executive Branch has not achieved its repeal "*due to the Separation of Powers that exists according to this State's law, having been rejected by the Legislative Branch*". The Office recalls that according to the jurisprudence of the inter-American system for the protection of human rights, there is no such distinction about the international liability of respect and protection of the human rights that corresponds to the State of Panama as signatory to the American Convention. Consequently, the Office of the Special Rapporteur urges the Legislature to bring the legislation in line with the recommendations that arise from this Report.

55. The Rapporteur's Office acknowledges the progress that enactment of Law 55 (1999) represents. However, pursuant to the objectives laid out in the program of President Mireya Moscoso and based on the jurisprudence of the organs of the inter-American system, the provisions of the American Convention, and the Declaration of Principles on Freedom of Expression, some laws and practices still in existence in Panama need to be revised, as they restrict and limit freedom of expression.

²⁵ See Report of the Office of the Ombudsman of Panama, "Democracy, Freedom of Expression, and Libel and Slander Suits," December 2002.

IV.b. Constitutional Framework

56. Article 37 of the Constitution of Panama provides that “Every person is free to express his/her thoughts, in speech, in writing, or in any other medium, without prior censorship; but legal liabilities shall be incurred when, in any of these media, an individual’s reputation or character is attacked or public security or domestic order is threatened.”

57. Article 85 of the Constitution provides that the “mass communications media are an instrument of information, education, recreation and cultural and scientific dissemination. When used for publicity or advertising, such publicity and advertising shall not be inimical to society’s health, morals, education, cultural edification and the national conscience. The law shall regulate publicity and advertising.”

58. Although Panama’s Constitution upholds freedom of thought and expression, in the last twenty years that very basic right has been under assault as a result of court-ordered punishments and the abuse of political power by public officials protected by the so-called “*desacato*” laws. The result was that the country’s various social communicators began to censor their own remarks or to refrain from any commentary. Also, the provisions that allow prior censorship and those that impose prison sentences for libel and slander establish unlawful restrictions on freedom of expression.

59. On the matter of access to information, Article 41 of Panama’s Constitution establishes the right of petition:

Everyone has the right to file petitions and respectful complaints to public servants, for motives of private or social interest, and the right to receive a prompt resolution of the matter.

The public servant with whom a petition, inquiry or complaint is filed shall resolve the matter within thirty days.

The law shall stipulate the punishments for those who violate this provision.

60. The Office of the Special Rapporteur notes that a law (No. 6, dated January 22, 2002) has been enacted containing rules for transparency in public affairs, establishing the remedy of *habeas data*, and containing other provisions concerning access to public information. The Office of the Special Rapporteur for Freedom of Expression is disturbed by the fact that the period of regulation, interpretation and implementation that followed the law’s enactment has seen setbacks, a matter that will be discussed at greater length in a separate section. The Special Rapporteur believes that the right to public information and the right to seek *habeas data* relief are factors that enable the free circulation of information and freedom of thought and expression, which are basic pillars that support the full development of a democratic society.

61. The following is an analysis of several laws still in force in Panama, laws that establish illegitimate restrictions on freedom of expression and information.

IV.c. Criminal Law

IV.c.1. “*Desacato*” (contempt) laws

62. The Inter-American Commission on Human Rights was particularly careful to examine the incompatibility of the laws that criminalize offensive language aimed at public officials, called the “*desacato*” laws, with the right established under Article 13 of the Convention, which protects freedom of thought and expression.²⁶

63. The Commission found that the use of *desacato* laws to protect the honor of public officials acting in their official capacities unjustifiably grants them a right that is not available to other members of society. Even those laws that allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgments, rather than purely fact-based statements. Proving the veracity of these statements may be impossible, since value judgments are not susceptible of proof. Thus, a rule compelling the critic of public officials to guarantee the factual assertions has disquieting implications for criticism of governmental conduct.

64. The Commission also noted that the rationale behind *desacato* laws reverses the principle that a properly functioning democracy is indeed the greatest guarantee of public order. These laws pretend to preserve public order precisely by restricting a fundamental human right which is recognized internationally as a cornerstone upon which democratic society rests. *Desacato* laws, when applied, have a direct impact on the open and rigorous debate about public policy that Article 13 guarantees and which is essential to the existence of a democratic society. In this respect, invoking the concept of “public order” to justify *desacato* laws directly inverts the logic underlying the guarantee of freedom of expression and thought established in the Convention. The Commission wrote the following about the incompatibility of the *desacato* laws with the fundamental right of freedom of thought and expression upheld in the American Convention on Human Rights:

Desacato laws restrict freedom of expression because they carry with them the threat of imprisonment and/or fines for those who insult or offend a public official... The fear of criminal sanctions necessarily discourages people from voicing their opinions on issues of public concern particularly when the legislation fails to distinguish between facts and value judgments.²⁷

65. The special protection *desacato* laws afford public functionaries from insulting or offensive language is not congruent with the objective of a democratic society to foster public debate. This is particularly so in light of a Government's dominant role in society, and particularly where other means are available to reply to unjustified attacks through the government's access to the media or individual civil actions of libel and slander. Any criticism that is not related to the officials' position may be subject, as is the case for all private individuals, to ordinary libel, slander and defamation actions. In this sense, the Government's prosecution of a person who criticizes a public official acting in his or her official capacity does not comply with the requirements of Article 13(2) because the protection of honor in this context is conceivable without restricting criticism of the public administration.

66. The Commission further observes that “contrary to the rationale underlying *desacato* laws, in democratic societies political and public figures must be more, not less, open to

²⁶ See the Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights, *supra*.

²⁷ *Ibid.*, p. 208.

public scrutiny and criticism.”²⁸ The open and wide-ranging public debate, which is at the core of democratic society, necessarily involves those persons who are instrumental in devising and implementing public policy. Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.

67. Articles 13(2) recognizes that the zone of legitimate State intervention begins at the point where the expression of an opinion or idea interferes directly with the rights of others or constitutes a direct and obvious threat to life in society. However, particularly in the political arena, the threshold of State intervention with respect to freedom of expression is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression.

68. Principle 11 of the Declaration of Principles on Freedom of Expression reads as follows:

Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as “*desacato laws*,” restrict freedom of expression and the right to information.

69. In keeping with the recommendation made by the Inter-American Commission on Human Rights to the effect that the member countries should repeal the domestic *desacato* laws, and consistent with the objectives spelled out in the government’s own program, it is the duty of the Panamanian State to repeal those laws that allow their officials to punish private citizens for expressing opinions critical of the performance of persons in public office.

70. There are several “*desacato*” laws in the Panamanian legal system.

71. Article 33 of the Constitution, which provides that:

The following may impose sanctions, without first going to trial, in the circumstances and under the terms that the law prescribes:

1. Public servants who exercise command and jurisdiction or impose fines or arrest, when offended or treated with disrespect while performing the functions of their office or by reason of their performance of their office.

72. The Office of the Special Rapporteur takes into account the restrictive interpretation that the State of Panama makes in its remarks and observations to this Report, when it was submitted as a preliminary report, regarding this constitutional provision and those that are next specified. In that sense, the Office understands that it would be appropriate to promote legislative reforms that adapt the text of the laws according to the restrictive interpretation stated above, what would basically limit the criminal sanctions to those conducts that prevent the observance of the mandates of the authority or the law.

73. Article 202 of the Judicial Code, which authorizes magistrates and judges to have anyone who is disrespectful of them arrested for five days.

²⁸ *Ibid.*, p. 210.

74. Article 393 (former 386) of the Judicial Code, which provides that agents of the Public Ministry may arrest those who disobey them or fail to show them the proper respect. The Attorney General and the Government Prosecutor can fine an individual up to 50 *balboas* or have that person placed under arrest for up to 8 days.

75. Article 827 of the Administrative Code on Correctional Punishments, which authorizes the President of the Republic, provincial governors, and district mayors to arrest, for periods ranging from five days to two months, anyone who disobeys them or fails to show them the proper respect. The Office of the Special Rapporteur takes into account the remarks and observations of the State of Panama, when it was submitted as a preliminary report, in that regarding this provision, the recommendations made will be considered for a possible study and interpretation.

76. Article 307 of the Penal Code, which stipulates that anyone who offends or publicly insults the President shall face punishment of imprisonment for six to ten months.

77. Article 308 of the Penal Code, which stipulates that anyone who publicly vilifies any organ of the State shall be imprisoned for 6 months to one year and pay a fine of 50 to 100 days.

78. Article 922 of the Administrative Code on Public Order and Security, which provides that “anyone who offends or mocks a clergy of a religion that is permitted in the Nation shall be held under arrest for six to 18 days, even when the deed in question may not constitute a criminal offense.” The Office also highlights the goodwill of the State of Panama to review this provision.

79. As said previously, in December 2000 Panama’s Legislative Assembly voted against a bill that would have erased the “*desacato*” laws from Panama’s law books. The Office of the Special Rapporteur received a letter from Panama’s Ombudsman at the time, Italo Isaac Antinori-Bolaños, wherein he expressed concern over the decision taken by the Committee on Government, Justice and Constitutional Affairs that blocked passage of the bill that would have eliminated the “*desacato*” laws in Panama once and for all. As has been stated time and time again, these laws are contrary to freedom of expression and Principle 11 of the Declaration of Principles on Freedom of Expression. Moreover, and notwithstanding the statements of the State of Panama in its remarks and observations to this Report, when it was submitted as a preliminary report, and that were mentioned above, the action taken was contrary to what President Mireya Moscoso told the Rapporteur during his visit to Panama in July 2000.

80. The Office of the Special Rapporteur received information to the effect that various public officials have sometimes used these laws to silence criticism of them or to oust their critics from the political debate. For example, on June 22, 2000, Carlos Singares, editor of the newspaper *El Siglo*, was sentenced to eight days’ imprisonment for being disrespectful of Attorney General José Antonio Sossa, who invoked Article 386 of the Judicial Code. Singares had published an article that made allegations of sexual misconduct against Sossa. As previously indicated, Article 393 (former 386) gives the Attorney General summary authorities to order anyone he claims has offended him to be imprisoned for up to eight days. The person taken into custody is never given an opportunity to defend himself. Singares appealed the Attorney General’s order by filing a petition of *habeas corpus* with the Supreme Court.

However, the Supreme Court ruled that Article 386 was constitutional, based on Article 33 of the Constitution. Singares was imprisoned from July 28 to August 4.

81. Democratic processes are strengthened by a robust and informed debate in which politicians and public figures are more exposed to public criticism and scrutiny. The Office of the Special Rapporteur is deeply troubled by Panama's use of the *desacato* laws to curtail freedom of expression, especially when journalists and other social communicators criticize or publish information of public interest about public officials' performance of their official duties. The use of these laws as a weapon to restrict freedom of expression imperils the very rights and freedoms upheld in Panama's own Constitution and in the American Convention on Human Rights.

IV.c.2. Defamation, libel and slander

82. Defamation, libel and slander laws are intended to protect the rights to one's good name, reputation and privacy. These rights are protected under Article 11 of the American Convention. Protection of these rights is accepted as legitimate grounds for a limitation on freedom of expression. Nevertheless, certain clarifications are necessary, since free exercise of freedom of expression must be accorded equal protection. Any limitations imposed must be narrowly defined. As the Inter-American Commission on Human Rights has said, the subsequent imposition of liability of which the American Convention speaks must be applied in a manner compatible with the democratic principles that ensure open, fluid communication between individuals and the authorities.

83. The Commission and the Court have both held that any conflict that might arise in the application of articles 11 and 13 of the Convention can be resolved by referring to the language used in Article 13(2) itself.

84. The Inter-American Court of Human Rights holds the following in this regard:

Article 13(2) of the Convention defines the means by which permissible limitations to freedom of expression may be established. It stipulates, in the first place, that prior censorship is always incompatible with the full enjoyment of the rights listed in Article 13, but for the exception provided for in subparagraph 4 dealing with public entertainments, even if the alleged purpose of such prior censorship is to prevent abuses of freedom of expression. In this area any preventive measure inevitably amounts to an infringement of the freedom guaranteed by the Convention.²⁹

85. It also wrote that:

Abuse of freedom of information thus cannot be controlled by preventive measures but only through the subsequent imposition of sanctions on those who are guilty of the abuses. But even here, in order for the imposition of such liability to be valid under the Convention, the following requirements must be met:

- "a) the existence of previously established grounds for liability;
- b) the express and precise definition of these grounds by law;
- c) the legitimacy of the ends sought to be achieved;

²⁹ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra*, par. 38.

d) showing that these grounds of liability are " necessary to ensure "the aforementioned ends."

All of these requirements must be complied with in order to give effect to Article 13(2).³⁰

86. A proper interpretation of the subsequent imposition of liabilities that may follow when the honor and reputation of others are not properly respected, must take into account the legitimacy of the ends and the causes necessary to achieve those ends.

³⁰ *Ibid.*, par. 39.

87. Here, the Inter-American Commission on Human Rights has written that:

A law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.³¹

88. It adds the following:

[I]n democratic societies political and public figures must be more, not less, open to public scrutiny and criticism... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.³²

89. And so, a penalty that obstructs or restricts the dialogue necessary between a country's inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence the necessary criticism of the public administration. By restricting freedom of expression to this degree, democracy is being transformed into a system where authoritarianism will thrive, forcing its own will over society's.

90. The Commission has written the following:

[T]he State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.³³

91. Principle 10 of the Declaration of Principles on Freedom of Expression includes the Commission's interpretation of privacy laws, as follows:

Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

92. Therefore, to ensure adequate protection of the right to freedom of expression, States should amend their laws on defamation, libel and slander so that only civil sanctions can be applied in cases where the aggrieved person is a public official. Also, liability for speech offensive to a public official should only be incurred in cases involving "actual malice." The principle of "actual malice" is what Principle 10 of the Declaration of Principles on Freedom of Expression is referring to where it states that "the author of the information in question was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

³¹ Report on the Compatibility of the *Desacato* Laws with the American Convention on Human Rights, *supra*, p. 208.

³² *Ibid.*, pp. 210-211.

³³ *Ibid.* 211.

93. The State of Panama has still not adapted its laws on privacy and protection of honor and reputation to bring them in line with the principle that distinguishes between public persons and private persons and the principle of actual malice. Article 37 of the Constitution of Panama establishes the basic principle on freedom of expression where it recognizes every person's right to express his/her thoughts, in speech, in writing, or in any other medium. However, it adds a provision that "legal liabilities shall be incurred when, in any of these media, an individual's reputation or character is attacked ..." Panama has still other legal provisions that establish penalties for those who make libelous or slanderous statements about public figures. The following are articles from Panama's Penal Code:

Article 172: Anyone who falsely accuses someone of committing a punishable offense shall pay a penalty of 90 to 180 days' fine.

Article 173: Anyone who offends a person's dignity, honor or good name, either in writing or in any other form, shall pay a penalty of 60 to 120 days' fine.

Article 173 A: When the crimes described in articles 172 and 173 are committed via a medium of mass communication, the applicable penalty shall be 18 to 24 months' imprisonment in the case of libel and 12 to 18 months in the case of slander.

Article 175: The penalty for publishing or reproducing, in any medium, comments deemed to be offensive to another's honor shall be 18 to 24 months in prison.

Article 176: The person accused of libel shall not face penalties if he or she proves the veracity of the facts alleged. A person accused of slander shall only be permitted to show proof of the veracity of the allegations he or she has made when those allegations concern public servants, public or private corporations, when the alleged facts are related to the performance of their functions, but never the offended party's conjugal or private life.

94. With regard to the last of these articles, it is important to note that the Inter-American Commission has held that "Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker."³⁴

95. Article 2079 (former 2099-A) of the Judicial Code contains the following clause on libel:

The presumption of a suspect's innocence requires that the suspect's name and other clues as to his/her identity or connection to the crime under investigation be withheld until his/her conviction. Failure to comply with this clause shall constitute the crime of libel.

The exceptions to the above clause are cases involving common criminals known to be highly dangerous and whose whereabouts are being sought through the mass media, by the authority of the Public Ministry.

96. In part at least, Article 178 of the Penal Code does capture the distinction between public and private persons:

Articles 172 and 173 of this Code notwithstanding, discussions, criticisms, and opinions about the acts or omissions of public servants relating to the performance of their functions shall not constitute defamation, nor shall literary, artistic, historical, scientific or professional criticism.

³⁴ *Ibid.*, pp. 208-209.

97. The foregoing notwithstanding, according to information received by the Office of the Special Rapporteur, these slander and libel laws and the *desacato* laws have at times been used to harass, prosecute and/or imprison persons merely for expressing their views. Society must have an opportunity to freely and openly discuss not just those matters strictly “relating to [public officials’] performance” of their functions, but other matters that concern public figures and that are of legitimate public interest. The Office of the Rapporteur is very disturbed by reports received concerning a number of cases where the libel and slander laws have been enforced for statements made involving public persons.

98. When submitting its remarks and observations to the preliminary Report, the Republic of Panama stated its view on the compatibility of its legislation and article 13 of the Convention. Notwithstanding, as it is stated in the submitted document, “*the State of Panama has left the debate open regarding the decriminalization or not of the types of libel and slander and has promoted the study of this controversial topic, leaving it on the hands of a technical commission.*” The Office of the Special Rapporteur will be following the progress of said commission on the understanding that it may have regarding the observations made in this Report.

99. According to the report from the Office of the Ombudsman of Panama, 90 cases have been opened involving the crimes of defamation or libel since 1995; 78 of these were against journalists, social communicators or persons cooperating with the media.³⁵ Of those 90 cases, 13 ended in conviction, 6 in acquittal and 23 in discontinuances; in five cases the plaintiff withdrew charges. Forty-seven of these cases were brought by public officials. Some 17 cases got underway in 2002. These statistics show that there is a growing tendency to use the defamation and libel laws to silence those who criticize the handling of public affairs.

100. The Office of the Special Rapporteur understands that specific cases need not be mentioned in this report, as those cases are covered in its annual reports. Nonetheless, it is important to underscore its concern over the number of active cases, over the increase in cases in recent years, and at the fact that many of those bringing legal action are public officials.

101. The practices attending the criminalization of slander and libel are obvious limitations on freedom of expression. On one of the visits to Panama, the Office of the Rapporteur met with the Attorney General and expressed his concern at the criminalization of slander and libel. The Office of the Rapporteur trusts that the Attorney General will find other legal mechanisms that enable him to discharge his obligations without violating provisions of the American Convention on Human Rights.

IV.d. Prior Censorship

102. Article 13 of the American Convention strictly prohibits prior censorship. The one exception is provided for in paragraph 4, which allows prior censorship of public entertainments “for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.” The other restrictions allowed under this article are subject to subsequent imposition of liabilities, provided they are previously established by law and only to the extent necessary to ensure a) respect for the rights or reputations of others, or b) the protection of national security, public order, or public health or morals.

³⁵ See note 25.

103. Interpreting Article 13 in the “Last Temptation of Christ” case, the Inter-American Court of Human Rights held that a complete ban on the showing of this film in Chile was in violation of Article 13(4) of the convention. The State could only regulate access to the film in the case of minors under the age of 18.

104. Principle 5 of the Declaration of Principles on Freedom of Expression reads as follows:

Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

105. The prohibition of prior censorship, save in the circumstances provided for in Article 13(4), is absolute and is unique to the American system. The European Convention and the Covenant on Civil and Political Rights do not contain similar provisions. This is indicative of the importance that the American States attach to the need to impart and receive information, thoughts, opinions and ideas of every kind.³⁶

106. The Office of the Special Rapporteur is very troubled by the fact that there are laws in Panama that allow prior censorship. These laws are the following:

107. Cabinet Decree 251 of 1969, which is still in force, created a National Censorship Board empowered to authorize, classify or ban films, public entertainments, publications and radio and television broadcasts nationwide. Article 13(c) of this decree states that the Board is authorized to ban films, entertainments, publications, recordings, radio transmissions, television shows, etc. It is also authorized to restrict access in the case of minors. The following are among the grounds that can be invoked to justify a complete ban or restricted access:

- a) They are contrary to the basic principles of Christian morality or offensive to them;
- b) They include immoral, vulgar or obscene scenes that offend moral sensibilities and social propriety;
- c) They are offensive to the national dignity;
- d) In the judgment of the Ministry of Foreign Affairs and at the request of the respective diplomatic representative, they are not to be shown because their content is offensive or damaging to the dignity of friendly nations;
- e) By their substance or form, they weaken the moral fiber of society, contain criminogenic material that may be detrimental to society or cause unrest by undermining human, moral and family values;
- f) They are propaganda tools spreading alien theories and totalitarian systems that favor the destruction our democratic and republican system of government or are contrary to public order;
- g) The films or entertainments come from countries with totalitarian regimes and their proceeds will go -in whole or in part, directly or indirectly- to help keep those regimes in power. Such films and entertainments may only be shown when they are cultural in nature, and then only by special permission of the Ministry of Government and Justice.

108. The far-reaching powers of this Board are, without question, contrary to the requirements established by the American Convention because they allow access to films and

³⁶ See IACHR, Annual Report of the IACHR 1998, Vol. III, Report of the Rapporteur on Freedom of Expression, p. 19.

entertainments to be banned even in the case of those over the age of 18 and because some grounds have less to do with morality and more to do with politics.

109. Article 903 of the Administrative Code on Public Order and Security provides the following:

Members of the police force shall tear down, prevent circulation of and confiscate printed materials, manuscripts, caricatures, drawings or paintings that incite disruption of law and order or defiance of the Constitution, the law, and the legally constituted authorities; that suggest or advocate the commission of some crime, or that contain statements or concepts offensive to public employees or that are contrary to decency and good taste.

110. Article 177 of Panama's Electoral Code provides that election polls must be registered with the Electoral Tribunal before being published.

111. During the visits to Panama, the Office of the Special Rapporteur met with members of the Electoral Tribunal to express concern over the alleged use of this rule as a means to censor election polls. The rules establishing the principles governing election polls should always be intended to strengthen the unfettered circulation of information.

112. Article 178 of the Electoral Code bans the publication of election polls within the ten-day period leading up to the election or referendum.

113. These rules are basically examples of prior censorship and need to be repealed. They violate the right to circulate information and ideas of all types and thus constitute an illegitimate restriction on the right to freedom of thought and expression provided for in Article 13(2) of the Convention and are contrary to Article 37 of the Constitution of Panama. Nevertheless, the statements made by the State of Panama in its remarks and observations to this Report, when it was submitted as a preliminary report, are taken into account in that *"the State of Panama understands the concern of the Special Rapporteur on this issue and will adopt the necessary measures to allow the study and interpretation of the laws in force according to the recommendations of the Office."*

IV.e. Confidentiality of Sources

114. Principle 8 of the Declaration of Principles on Freedom of Expression states the following:

Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.

115. The confidentiality of sources is essential to the practice of informative and editorial journalism. The Rapporteur is, therefore, disturbed by the existence of laws that do not properly guarantee this very basic principle of journalism.

116. For example, Article 2105 (former 2128) of the Judicial Code reads as follows:

Anyone summoned by the examining official, whether to serve as a witness, expert or physician, must appear to make the statement or perform the procedure required of him. If he does not, if he

fails to appear or refuses to make a statement without a legitimate excuse, he shall face punishment of up to two days' imprisonment for each incident of contempt.

117. To be consistent with a proper interpretation of Article 13 of the American Convention, this rule must be applied in conjunction with Article 21 of Law 67, which provides that "No journalist shall be obligated to reveal his sources of information or the origin of his news, notwithstanding any liabilities he may incur for his own assertions." This provision must be the "legitimate excuse" to which Article 2128 of the Judicial Code refers.

IV.f. Qualification to be a journalist

118. In an advisory opinion, the Inter-American Court examined the question of whether the practice of requiring membership in a journalism association or a journalism degree in order to practice journalism was consistent with Article 13 of the American Convention.³⁷ In that advisory opinion, the Court wrote the following:

[J]ournalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional "colegio".³⁸

119. The Court also pointed out that journalism could not be feasible without complete freedom of expression, and that there was a kind of symbiotic relationship between the two.

[T]he professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner... The Court concludes, therefore, that reasons of public order that may be valid to justify compulsory licensing of other professions cannot be invoked in the case of journalism because they would have the effect of permanently depriving those who are not members of the right to make full use of the rights that Article 13 of the Convention grants to each individual. Hence, it would violate the basic principles of a democratic public order on which the Convention itself is based.³⁹

120. Finally, the Inter-American Court reasoned as follows:

The argument that licensing is a way to guarantee society objective and truthful information by means of codes of professional responsibility and ethics, is based on considerations of general welfare. But, in truth, as has been shown, general welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large. A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.⁴⁰

121. As a result of its analysis, the Court concluded that a law that limits the practice of journalism to licensed persons and that requires that a person have a certain university

³⁷ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra*.

³⁸ *Ibid.*, par. 71.

³⁹ *Ibid.*, paragraphs 74 and 76.

⁴⁰ *Ibid.*, par. 77.

degree in order to be licensed is an unlawful restriction of freedom of expression. Consistent with the Court's finding, Principle 6 of the Declaration of Principles on Freedom of Expression holds that:

Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirement of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

122. The Office of the Special Rapporteur welcomes the enactment of Law 55 of December 20, 1999, which repealed Law 68 of 1978. The latter had created the Technical Board of Journalism, which controlled the practice of the profession through its own licensing practices. Article 5 of Law 55 also struck down "any law contrary to

Law 55.⁴¹ The Rapporteur, however, was able to establish that provisions are still on the books that are contrary to the American Convention with regard to the question of who is qualified to practice the profession of social communicator.

123. Law 67, of September 1978, contains the following provisions that presumably are still in force:

Article 1: A professional journalist is anyone who regularly investigates for and writes the news; produces news media; engages in photographic reporting or commentary in the mass communications media, or does journalistic reporting for press or public relations offices in government or private institutions.

Article 2: To be recognized as a qualified journalist, one must: a) Have an academic degree (bachelor's in social communications or the equivalent) conferred by a Panamanian university or a degree conferred by a university abroad and revalidated at the University of Panama; or Show proof that he/she has worked continuously as a journalist, for no less than five years prior to the date on which this law takes effect; or

Have, at the time this law takes effect, worked steadily as a journalist for three or more years and continues to work as a journalist until he/she has five years' experience.

124. Although the clauses from Law 67 concerning the Technical Board of Journalism can no longer be enforced as the Board no longer exists, the Office of the Special Rapporteur is disturbed that laws remain on the books that set restrictive criteria for the practice of journalism.

125. The Special Rapporteur is also disturbed to observe that since 2001, proposals have been floated to reintroduce a kind of journalist licensing requirement, where certification would come from a superior journalism council. This year, the Chief Executive introduced a bill "to regulate the practice of journalism in Panama." If passed, the bill would repeal Law 67 of September 1978, mentioned earlier, and create this Journalism Council.⁴² While the Special Rapporteur has been informed that initiatives of this type have been shelved, the Special Rapporteur would like to reiterate that restrictions of this type on the practice of journalism violate the standards that the Inter-American Court established in its case law with regard to freedom of expression, and also violate the principles set out in the Declaration of Principles on Freedom of Expression. Notwithstanding, the Office of the Special Rapporteur would like to thank the information provided by the State of Panama when submitting its remarks and observations to this Report, when it was submitted as a preliminary report, in that *"the Supreme*

⁴¹ This includes certain provisions of Law 67 of September 1978, which make reference to the Technical Board of Journalism. To wit:

Article 4. To demonstrate that the foregoing requirements are fulfilled and obtain the qualifying certificate issued by the Technical Board of Journalism, the following requirements must be met:

- a) Presentation of a diploma from a duly registered national university, with the specialty in journalism; or
- b) Presentation of a revalidated degree in journalism issued by a foreign university; or
- c) A written statement from the director or directors of the information media or the employers for whom the candidate has worked for five years while engaged in the professional practice of journalism, or written proof from legally established journalism organizations that the applicant has been a member of the union for five years.

Article 7. To practice journalism on radio and television, a certificate attesting that the party is a licensed journalist is required.

⁴² See the Annexes of this report for the complete text of this bill.

Court of Justice declared on June 2, 1994, that Compulsory Membership cannot be required, and thus, it is not a practice in any profession in Panama.” As a consequence, the Office understands that it would be appropriate to reform the legislation accordingly.

IV.g. Access to information and *Habeas Data*

IV.g.1. Access to information held by the State

126. The broad protection that Article 13 of the American Convention establishes for freedom of thought and expression includes not just the right to impart information and ideas, but also the right to “seek” and “receive” information. Access to information held by the State is one of the pillars upon which democracy rests. The Inter-American Court of Human Rights has written that “it can be said that a society that is not well informed is not a society that is truly free”⁴³

127. In Principle 4, the Declaration of Principles on Freedom of Expression states the following on the right to access to information:

Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

128. The right of access to information is closely associated with the principle of transparency in government and that acts of government are in the public domain. In this sense, the State is a means to achieve the common good. From this perspective, information is the property of the individual who delegated management of public affairs to his/her representative.

What the principle of transparency demands is government that sees itself as the servant of the people, supplying any documentation that was previously, properly and clearly requested, provided that such documentation has not been temporarily excluded from the exercise of that right.⁴⁴

129. Without this information, the right to freedom of expression cannot be exercised to the fullest as an effective mechanism of citizen participation and democratic oversight of government affairs. This oversight becomes even more imperative because one of the most serious obstacles to building stronger democracies is corruption involving public officials. The absence of effective oversight “can lead to activity contrary to the essence of a democratic State and opens the door to transgressions and unacceptable abuses.”⁴⁵ Guaranteeing access to information held by the State serves to make government affairs more transparent and thus lessens corruption in the running of the State.

130. As to the specific purpose of this right, people have a right to request information on the public record or processed by the State, in other words, information considered to be

⁴³ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalist, *supra*, par. 70.

⁴⁴ Pomed Sanchez and Luis Alberto, *El Derecho de Acceso de los Ciudadanos a los Archivos y Registros Administrativos*, Editorial M.A.P., Madrid, 1989, p.109.

⁴⁵ Alicia Pierini, Valentín Lorences and María Inés Tornabene, *Habeas Data: Derecho a la Intimidad*, Editorial Universidad, Buenos Aires, 1999, p. 31.

from a public source or an official State document. Greater transparency in government affairs needs to be encouraged as that kind of transparency is essential to strengthening the democratic institutions of the countries of this hemisphere. For this, the presumption must be that disclosure of information is good and that restrictions on access to State-held records must be the exception rather than the rule. Any such restrictions must be expressly established by law, and apply only to the extent necessary to ensure “respect for the rights or reputations of others, or the protection of national security, public order, or public health or morals.”⁴⁶ Every restriction on access to information must, therefore, be decided by looking at each request on a case-by-case basis. The interpretation of the Inter-American Court of Human Rights is that restrictions on freedom of expression and information “must be judged by reference to the legitimate needs of democratic societies and institutions” since freedom of expression and information is essential to any form of democratic government.⁴⁷ Therefore, the State must ensure that when a national emergency exists, the practice of not disclosing information held by the State will be enforced only for the time that the circumstances necessitate and will change once the emergency situation has passed.⁴⁸

131. Because access to public information is so crucial to the functioning of a democracy, States must develop laws that help everyone obtain that information. This means that the laws must be clear and accessible to others. The costs to those who request information must be reasonable for the type of information being requested. The State must process requests for information rapidly and impartially. Whenever the State opts not to disclose the information being requested, it must explain why and offer the applicant an opportunity to appeal its decision to an independent body. As said before, the law must spell out the exceptions to the rule, which must be closely related to one of the legitimate grounds for nondisclosure given in Article 13 of the American Convention. With regard to the exceptions, the “necessity” requirement means that the State may restrict access to information only if its disclosure would cause substantial damage to one of the legitimate interests. Finally, the Special Rapporteur is recommending that the law regulating access to information should include provisions requiring that public agencies automatically publish certain types of documents that are of significant public interest.⁴⁹

132. Panama does not have a constitutional clause expressly guaranteeing the right to access information. However, Article 41 of the Constitution of Panama does contain a clause establishing the right of petition:

Everyone has the right to file petitions and respectful complaints to public servants, for motives of private or social interest, and the right to receive a prompt resolution of the matter.

The public servant with whom a petition, inquiry or complaint is filed shall resolve the matter within thirty days.

The law shall stipulate the punishments for those who violate this provision.

⁴⁶ American Convention, Article 13(2).

⁴⁷ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra*, par. 42.

⁴⁸ See Chapter IV, Article 27 of the American Convention on Human Rights, which concerns the obligations of States in states of emergency.

⁴⁹ See Article XIX, The Right of the Public to Know: Principles on Freedom of Information Legislation, June 1999, reproduced in the Annual Report of the Special Rapporteur on Freedom of Expression, 1999, p. 90.

133. This right of petition can serve as the basis for petitions filed seeking public information.

134. In the Annual Report of the Inter-American Commission on Human Rights for 2001, the Office of the Special Rapporteur for Freedom of Expression cited enactment of Law No. 6 on January 22, 2002, as a positive step.

135. This Office shares the principles articulated in that law's statement of reasons, especially where it states that "*It is an indisputable fact that the information that the State functionaries manage belongs to the entire community, and must therefore be public. Transparency of information regarding the acts of the authorities is a basic citizen right and the most effective means to combat corruption.*" (sic. Statement of Reasons of Law No. 6, paragraph 5).

136. This statement is entirely consistent with Principle 4 of the Declaration of Principles on Freedom of Expression, which provides that "*access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.*"

137. However, the Office of the Special Rapporteur learned that an Executive Decree No. 124 was issued on May 21, 2002, its purpose being "*... to establish the administrative mechanisms necessary to make it easier for private persons to exercise the right to freedom of information recognized in Law No. 6, of January 22, 2002...*" (sic. Art. 1 of that decree). Article 8 provides that an "interested person" for purposes of Article 11 of Law No. 6 is "*a person who has a direct personal interest in the information he or she is requesting*" (sic. Art. 8 of Decree 124).

138. Inasmuch as the information referred to in Article 11 of the law concerns government spending, the Special Rapporteur for Freedom of Expression considers that this article is inconsistent with the purposes of the law and international standards on access to information, as any person should be entitled to exercise this right. In the annual report for 2000, the Office of the Special Rapporteur stated the following: "*This right acquires even greater significance because it is closely related to the principle of transparency in administration and the public nature of government activities. The State is a vehicle for ensuring the common good. In this context, the owner of the information is the individual who has delegated the management of public affairs to his or her representatives.*"⁵⁰

139. On August 9, 2002, Panama's Ombudsman filed a legal suit seeking repeal of Articles 4, 5, 8, 9 and 14 of the Decree.⁵¹

140. In a letter to the Panamanian Government, dated July 9, 2002, the Special Rapporteur did convey his concern, especially with regard to certain regulatory articles. In that letter, the Special Rapporteur requested information on this and other situations affecting freedom of expression in Panama. When the Government of Panama did not reply, the Special

⁵⁰ See IACHR, Annual Report 2000, Vol. III, Report of the Rapporteur for Freedom of Expression., p. 18.

⁵¹ Information supplied by the Office of the Ombudsman of the Republic of Panama.

Rapporteur sent a second letter on November 4, 2002, wherein he reiterated the request for information. While the Government of Panama informed the Office of the Special Rapporteur that it was preparing its reply, the latter has not yet been received.

141. The Office of the Special Rapporteur also received information on various court rulings on petitions seeking relief in cases where requests for information had been denied. According to reports received, of the 65 appeals filed, only ten were decided in the plaintiff's favor.⁵² One of the court rulings that went against the plaintiff was the October 22, 2002 ruling in the case that attorney Guillermo Cochez filed with the Supreme Court. Mr. Cochez had requested information concerning the trips taken by President Mireya Moscoso, but a minister with the Office of the President denied the request. The Supreme Court ruled against Mr. Cochez, on the grounds that he had fail to show that he was an "interested person" as defined in the Law on Transparency.⁵³

142. While it is important to create laws guaranteeing access to information, to be effective those laws have to be observed.

IV.g.2. Petition of *Habeas Data*

143. Another side of the right to access to information is the petition of *habeas data*. *Habeas data* is based on three rights: 1) every person's right not to have his privacy interrupted; 2) every person's right to access information about himself stored in public and private databases and to modify, nullify or correct his personal information, given that the information may be sensitive⁵⁴, false, tendentious or discriminatory,⁵⁵ and 3) a person's right to use the petition of *habeas data* as a control mechanism.⁵⁶ This right to access and control personal data is essential in many realms of life, and the lack of judicial mechanisms to correct, update or nullify data could have consequences directly inimical to one's right to privacy, one's right to have one's honor respected, one's right to personal identity, right to property and right to monitor the data compiled.⁵⁷

144. *Habeas data* becomes even more important with the new technologies. As the use of the computer and internet increases, both the State and the private sector have rapid access to a wealth of information about individuals. Therefore, concrete channels must be guaranteed to give individuals rapid access to information in order to modify incorrect or outdated information stored in the electronic databases. *Habeas data* imposes certain obligations upon agencies that process data: they must use the data for the specific and explicitly established objectives; the security of the data must be protected against accidental and/or unauthorized access or manipulation. In cases where State or private sector institutions have come by the data by irregular means and/or unlawfully, the petitioner must have access to that information, even when the information is classified.

⁵² Journalists against Corruption, February 5, 2003.

⁵³ Office of the Ombudsman of the Republic of Panama.

⁵⁴ "Sensitive data" is understood as any information related to a person's private life..

⁵⁵ See Pierini *et al.*, *supra*, p. 16.

⁵⁶ See Víctor Abramovich and Christian Courtis, *El acceso a la información como derecho*, CELS, 2000, p. 7.

⁵⁷ See Supreme Court of Argentina, *Secretaria de Investigación de Derecho Comparado*, Vol.1, 1998, p. 121.

145. As for the control/oversight function of *habeas data*, it is important to point out that in some countries of the hemisphere, *habeas data* is an important tool for monitoring the activity of the State's security and intelligence agencies. Access to personal data allows one to monitor whether these State agencies are acting within the law in compiling people's personal data. Access to that information also enables the petitioner to establish the identity of those involved in the illegal data gathering, so that the guilty parties can be given the punishment that the law provides.⁵⁸

146. For a petition of *habeas data* to be efficiently processed, the administrative obstacles that make it difficult to obtain the information must be cleared away and information-request systems should be introduced that are easily accessible, simple and inexpensive for the applicant to use. Otherwise, the remedy would be in name only, since in practice it would do nothing to facilitate access to information.

147. To use the petition of *habeas data*, one need not have to reveal the reasons why the information is being requested. The mere fact that one's personal data are on file with public or private institutions is reason enough to exercise this right.⁵⁹

148. Principle 3 of the Declaration of Principles on Freedom of Expression states the following:

Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

149. As said in the preceding chapter, with enactment of Law 6 of January 22, 2002, the Republic of Panama now has specific legislation on the subject. For the reasons explained, the Office of the Special Rapporteur regards this as a welcome development.

IV.h. Monopolistic Trend

150. Several times during its visits to Panama, the Rapporteur's Office was told of the possible presence of a monopolistic trend in the ownership of television stations. While the Rapporteur's Office does not believe that this practice shows any serious problem in Panama at the present time, it would like to say for the record that monopolistic practices in the communications media –in radio, television and the print media- are incompatible with the free exercise of the right to freedom of expression in a democratic society. States have a duty to guarantee equal opportunity in concessions of radio and television frequency. The Inter-American Court has written the following on the subject:

It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.⁶⁰

⁵⁸ See Abramovich and Courtis, *supra*, p. 9.

⁵⁹ See Miguel Angel Ekmekdjian, *Derecho a la Información: Reforma Constitucional y Libertad de Expresión, Nuevos Aspectos*, Ediciones Depalma, 1996, p.115.

⁶⁰ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra*, par. 34.

151. The Special Rapporteur would also bring the State's attention to the fact that in Principle 12, the Declaration of Principles on Freedom of Expression holds that:

Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.

IV.i. Working conditions of social communicators

152. During this visit, the Rapporteur's Office was repeatedly told of the difficult predicament of people working in the communications media. Policies have to be considered that will improve the working conditions of the social communicators. These people are the first and main link in the communications chain. Inadequate working conditions make it difficult for social communicators to perform their functions and, as a consequence, adversely affect every Panamanian citizen's right to information. The media should have training programs for the social communicators.

IV.j. Ethics in journalism

153. A number of people complained of what they called "excessive or abusive exercise of freedom of expression." The Office of the Special Rapporteur received information alleging that certain media outlets were being used as mouthpieces to defend personal, economic interests or to discredit people, without adhering to the facts and to the detriment of the Panamanian people's right to information. Given the seriousness of these allegations, the Office of the Special Rapporteur would like to remind everyone associated with the mass media that credibility is earned by a commitment to truth, impartiality and fairness. When interests other than the truth are being served, the result is biased reporting. This is detrimental to society as a whole and inimical to the consolidation of a democratic system.

V. CONCLUSIONS AND RECOMMENDATIONS

154. The Office of the Special Rapporteur for Freedom of Expression recognizes that the advance of democracy in Panama has helped cultivate the right to freedom of expression.

155. During its stay in Panama, the Special Rapporteur was able to observe a wide-ranking, open debate of ideas and opinions. The only way to continue to perfect the democratic process is by unfettered debate of ideas in all communications media. However, the Special Rapporteur also received information about legislation and practices that restrict the exercise of freedom of expression. Such reports are disturbing to this Office. The authorities need to act quickly to repeal these laws and stop these practices.

156. If respected, the right to freedom of expression that makes the free exchange of ideas possible serves to strengthen representative democracy and, through its social communicators, empowers the citizenry to influence and/or control the running of the machinery of government. Freedom of expression is essential to building stable, participatory democracies and is therefore a right that, in recent years, has been more zealously guarded. To be effectively protected, full exercise of the right to freedom of expression requires a political commitment on the part of the governments, a body of law capable of defending freedom of expression, and an independent and effective judiciary that can ensure exercise of and full respect for this right.

157. The repeal of some of the so-called gag laws in December 1999 is indeed commendable, particularly since previous governments had pledged to do so but never delivered on their promise. The Office of the Special Rapporteur is confident that in what remains of her term of office, the President will, as she told the Rapporteur on his first visit, sustain and enhance Panamanians' right to freedom of expression.

158. As previously pointed out, however, despite the legal reforms that the present government has introduced, anachronistic laws are still on the books that restrict effective exercise of the right to freedom of expression. Some public officials are taking advantage of these laws to silence their critics.

159. The Special Rapporteur is most troubled by the slander, libel and *desacato* laws that have sometimes been used to persecute, harass and/or imprison certain individuals for voicing their opinions. It is wrong to deprive anyone of his/her liberty for having exercised his/her right to freedom of expression to express views about public officials.

160. The Special Rapporteur is therefore making the following recommendations. While they do not cover all the issues, these recommendations do address the priorities that will help achieve full exercise of freedom of expression in Panama:

1. The commitment undertaken by the government to repeal all *desacato* laws should materialize as soon as possible.
2. The slander and libel laws enforced to silence criticism of public officials and public or private persons who voluntarily become involved in public affairs should be reformed with a view to their gradual decriminalization, according to the standards set by the IACHR.

3. The regulation and enforcement of the law to ensure access to information held by the State and *Habeas Data* should be reviewed, to accelerate and make more effective access to information.

4. Domestic regulations should be adopted according to the American Convention on Human Rights and the inter-American jurisprudence.

5. Campaigns should be conducted to promote and protect the right to freedom of expression.

161. The Special Rapporteur for Freedom of Expression will continue to monitor and report on the status of freedom of expression in Panama and will cooperate in efforts to find mechanisms that promote full observance of this right, in accordance with international standards. The Office of the Special Rapporteur for Freedom of Expression is at the disposition of the Panamanian authorities and civil society to partner with them in conducting activities that will promote and disseminate the right to freedom of expression. Finally, the Office of the Special Rapporteur would like to thank the remarks and observations that the Republic of Panama was good enough to make to this Report, which had been timely submitted as a preliminary report.