

# **LEGAL, POLITICAL AND PRACTICAL OBSTACLES TO THE ENFORCEMENT OF LABOR LAWS IN PANAMA**

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on Fundamental Labor Rights in Central America, Latin America and the Caribbean

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## **I. Introduction:**

Panamá is a small Central American republic with a population of 2,839,177 people according to the most recent Population and Housing Census conducted in 2000. Of these, 1,432,566 are men and 1,406,611 are women, for a "masculinity index" of 101.8. The low number of inhabitants results from Panamá having one of the lowest rates of average population growth (2.00) in Latin America (Inspector General's Office, 2001).

Of the total population, 285,231 (10%) belong to six clearly delimited indigenous ethnic groups: Kunas, Ngobes, Buglés, Teribes, Bokota and Emberás. The rest of the population is Hispanic culturally, with a significant influence of Afro-West Indian descendants.

In 2000 32.2% of the population was under 15 years of age, 6% was over 65, and 62% was between 15 and 64. The country's median age was 24. Educational indicators are high, with a relatively low illiteracy rate (7.8%) compared to other countries in the region. Most illiteracy is concentrated in rural and indigenous areas. On average, Panamanians make it through 7.5 years of education. 9.97% has studied in universities, 32.94% reached some level of secondary education, and another 40% reached some level of primary education.

The population ten years of age and older -- used statistically to estimate the numbers of "working age" persons, even though the law prohibits work by minors under the age of 14 -- was estimated at 2,206,868 people (1,109,656 men and 1,097,212 women) in the 2000 census. Of this total, 52.6% (70% of the men and 35% of the women) are economically active. Of these, 13% (11.1% of the men and 16.7% of the women) were unemployed.

These data show a negative situation for Panamanian women, who have a higher unemployment rate than men (see Table No. 1).

**Table No. 1**  
**The population ten years of age and older, by sex and economic condition**  
**Population and Housing Census**  
**2000**

	<b>Total</b>	<b>Men</b>	<b>Women</b>
<b>Total</b>	<b>2,206,868</b>	<b>1,109,656</b>	<b>1,097,212</b>
<b>Economically active</b>	<b>1,161,612</b>	<b>777,051</b>	<b>384,561</b>
<b>Rate of activity</b>	<b>52.6%</b>	<b>70.0%</b>	<b>35.0%</b>
<b>Employed</b>	<b>1,010,837</b>	<b>690,639</b>	<b>320,198</b>
<b>Unemployed</b>	<b>150,775</b>	<b>86,412</b>	<b>64,363</b>
<b>Percentage unemployed</b>	<b>13.0%</b>	<b>11.1%</b>	<b>16.7%</b>
<b>Economically inactive</b>	<b>1,045,256</b>	<b>332,605</b>	<b>712,651</b>

Source: Inspector General's Office. **National Population and Housing Censuses**. Volume II. June 2001.

Panamá's social and economic history has been determined by its geographic position. Panamá is a thin isthmus in which, at its most narrow, only 80 kilometers of land separate the Pacific ocean from the Caribbean sea. Panamá is situated right in the center of the American continent. For these reasons, from at least the time of Spanish colonization to the present, it has been a crucial point of passage for global commerce and human migrations.

This "transitist" vocation (as some scholars have called it) acquired greater force at the beginning of the twentieth century when the United States influenced Panamá's separation from Colombia and built the Panamá Canal under a burdensome treaty affecting the political and legal sovereignty of the most important part of Panamá's territory. Since then, the canal has been the heart of Panamanians' economic and social life. The struggle to restore lost sovereignty over the Canal Zone became a central longing driving nearly all sectors of the country.

The importance of "transitism" can be seen in the fact that two-thirds of the country's economic activity takes place in its tertiary sector. While agriculture and industry together constitute only 21.6% of Gross Domestic Product (GDP), the tertiary economic sector of private and governmental services and commerce accounts for 77% of GDP. This phenomenon can also be seen demographically, with the cities of Panamá and Colón (including their suburbs), which are located along the canal area, containing over 60% of the country's population.

The composition of the Panamanian GDP influences the distribution of labor among the various types of economic activity. Thus, according to the most recent Homes poll (Inspector General's Office, August 2003): 227,668 workers (17.71%) labor in the economy's primary sector, agriculture; 233,133 workers (18.14%) are in industry; 452,152 wage-earners (35.2%) work in the tertiary sector; 182,700 (14.22%) are public employees; and 78,550 (6.1%) are in domestic service.

Panamá's close economic relationship with the United States can be seen in the fact that 12% of U.S. foreign trade passes through the Panamá Canal and until recently the canal was the primary route for internal commerce between the east and west coasts of the United States. Still today, over 60% of cargo passing through the canal comes from or is destined for the United States. Japan and China follow the United States as the canal's principal users. taking the global economy as a whole, between 4% and 5% of sea trade passes through Panamá.

Panamá's economic dependence on the United States makes the United States the primary source of our imports (30%) and the primary destination of our exports (50%). Foreign direct investment in the country also comes primarily from the United States. Through the 1970s the United States share was over 90% of total foreign direct investment, giving Panamá the highest per capita rate of U.S. investment on the American continent.

This state of affairs has given relations between the two countries a history full of contradictions and of economic and cultural interpenetrations, but also a history full of conflict. Conflict has arisen in particular as a result of the injustice of the United States having taken unilateral control over the canal and adjacent territory, creating a country within another country.

The need to resolve this conflict -- which reached its most critical point in the 1960s -- was a central cause of the 1968 coup d'etat led by General Omar Torrijos. During that regime -- which lasted more than a decade -- the country was politically and legally reorganized, with lasting effects. In the area of labor law and class relations, decisions of great importance were made during this time. Analysis of these decisions will make up part of the present report.

During the first half of the 1970s, Panamá adopted fairly progressive labor laws establishing fundamental workers' rights for all fields. These advances were set down in both the **Labor Code** and the **Political Constitution** -- approved a few months apart in 1971-72. The political context that gave rise to this approach was the populist military regime of General Omar Torrijos Herrera. Based in a Keynesian economic perspective, this regime saw a determining role for the State in protecting the rights of the weakest and in stimulating the country's economic growth.

The Torrijos regime was part of a current of populist military leaders that appeared in various Latin American countries in the early 1970s, among which can be mentioned the Peruvian experience and the shorter Bolivian one. On a separate level but marked by similar tendencies, this was the era of Allende's government in Chile and of the Social Democrat-inspired governments of López Michelsen in Colombia and Carlos A. Pérez in Venezuela -- which had great influence on Torrijos.

The underlying motivation for this focus on social conflict and social issues was rooted in the Torrijos regime's need to gain public support and national unity in order for Panamá to confront the United States on the issue of Panamanian sovereignty over the canal. In this sense, the labor reforms bore fruit and created a propitious climate for signing 1977's Torrijos-Carter Treaty.

Influenced by changes in the international economic situation and by the prevailing economic approach of international financial institutions, a gradual transformation of Panamá's social and labor situation began in the second half of the 1970s and continues today. Keynesian doctrines have given way to a neoliberal focus, leaving clear footprints in Panamanian labor law.

Thus, facing what was called the "oil crisis" of the 1970s, a partial reform of the Labor Code was carried out in 1976. Facing what was called the "Latin American debt crisis" of the early 1980s, new reforms were carried out in 1986, 1990 and 1995 under direction from the World Bank and International Monetary Fund. These reforms have substantially reduced the gains for labor originally established in 1971.

## **II. The evolution of labor law in Panamá (1971-2004)**

### **A. A historical overview of labor law reforms**

The five year period between 1972 and 1977 produced the most significant advances in social and labor policy of the country's history. These gains began to be lost when -- once the goal of progressive return of the canal to Panamá was achieved -- the military regime shifted its focus from a cross-class alliance towards the business sector. This shift began in response the 1973-74 economic crisis, then continued under the influence of international financial institutions' neoliberal focus in the 1980s. The trend deepened when the military regime's crisis began under General Manuel A. Noriega in the mid-1980s, after the death of Torrijos in 1981.

Progress on social matters in the 1970s can also be seen in **Panamá's ratification, over the course of its history, of 74 international labor conventions as a member of the International Labor Organization (ILO). Of these, 67 remain in effect. The majority were approved during the 1970s: 15 were approved before 1970, 36 were approved in 1970, and 18 were approved in 1971, whereas just 5 were approved in the decade of the 1990s (ILO, 2003).**

The so-called "oil crisis" brought a substantial contraction of economic growth in 1974-75. The Panamanian regime's response came in **Law 95 of December 31, 1976**, which suspended and modified a large number of the labor rights established in the 1971 Labor Code (we shall refer to these measures in detail below).

Later the so-called "Latin American debt crisis," which began in 1981, combined with the International Monetary Fund's first "adjustment" recommendations to produce **Law 8 of April 30, 1981**. This law substantially reformed labor rights. Subsequent Structural Adjustment Loans ("Sal I" and "Sal II") contributed to the genesis of the military regime's social and political crisis by causing a wave of workers' and popular protests.

Between 1987 and 1989, Panamá's political crisis experienced a qualitative shift as General Noriega's successive administrations entered open confrontation with the United States and as the regime's popular foundations broke -- due to the effects of increasingly neoliberal economic policies and to the demand for democratic freedoms. This crisis led to a temporary halt to structural reforms, but United States sanctions in effect from February 1988 until December 1989 brought economic disaster. GDP dropped by as much as 17%. This caused business closures, massive layoffs, and the cancellation of countless social protections ("thirteenth month" pay was suspended; State salaries were paid with depreciated currency; etc.).

Months before the devastating U.S. economic sanctions were put into place, a labor reform was approved as **Law 1 of March 17, 1986**. This law broadened previous reforms of the Labor Code. The trade union movement responded to it with a large general strike. The

strike was defeated when employers, protected by the new law, proceeded to fire thousands of mid-level union leaders. The trade union movement in the industrial sector still has not recovered from this setback (Beluche, 1994).

The December 20, 1989 U.S. invasion brought an end to Noriega's regime, but the trade union and social rights lost during the crisis were not restored. On the contrary, in July 1990 the U.S. had Guillermo Endara's administration sign a "Donation Convention." In it Panamá agreed to apply a tough neoliberal economic plan: reducing the State payroll, privatizing public enterprises, reducing import tariffs, and carrying out a new labor reform. The Endara government (1989-1994) began to fulfill the promises made in this convention and Ernesto Pérez Balladares (1994-1999) continued their implementation.

For the Panamanian trade union movement, one of the first consequences of the U.S. invasion was the Endara administration's imposition of **Law 25 of December 1990**. Under it thousands of public servants -- especially in State companies which until then had not been privatized and which had trade unions and labor associations -- were fired, on the accusation they were planning a coup d'etat. The accusation was made without evidence, based on a call to strike having coincided with a military disturbance on December 5 of that year. The trade unionists' legal appeal took ten years to pass through all Panamá's judicial authorities, fruitlessly. It then went to the Inter-American Commission on Human Rights, which ruled in favor of their appeal.

The Endara government also approved **Law 16 of November 6, 1990**. This law created Export Processing Zones (*maquilas*) in which the Labor Code's primary protections were suspended for businesses funded by foreign capital. This law had limited effect, however, because the expected *maquila* capital migration never came -- not so much as a result of insufficient incentives granted in the law, but rather as a result of the lack of a separate currency and the free circulation of American dollars (which made Panamanian labor artificially "expensive" in comparison to that of other Central American and Caribbean countries).

**Law 2 of January 13, 1993** was also passed as part of Guillermo Endara's efforts. It partially modified the Panamanian Labor Code, but included the positive step of reestablishing the right to collective bargaining of work contracts. This right had been suspended during the critical phase of Noriega's regime. We will refer to this law in detail below.

The greatest neoliberal reform the Labor Code suffered came under the Ernesto Pérez Balladares administration in **Law 44 of August 12, 1995**. Its basic goal was to make the layoffs process cheaper for employers. This reform prompted another important general strike. Four trade unionists died and dozens were arrested during the strike.

The successive labor reforms to which we have referred were complementary. They systematically reduced the social gains made for workers in the 1971 Labor Code. This has led to economic reforms centrally attacking others aspects of social rights (tax reform, for example) under President Mireya Moscoso (1999-2004).



This most recent administration has initiated two projects affecting labor rights -- although their implementation has not advanced much. **Law 12 of February 6, 2002** deals with the promotion of "first job" policies -- what Europeans call "garbage contracts" -- offering incentives for companies to give jobs to youth. The rights established in the Labor Code are not in effect for these jobs. The other recent project was to create and Export Processing Zone in the former U.S. military base, called Howard.

The novel innovation under Moscoso has been to hand over the Ministry of Labor and Job Development (MITRADEL) directly to business sector leaders, getting rid of previous administrations' lawyers and technocrats. This has led to completely unfair and illegal actions taken by Ministry functionaries against trade unionism, including refusing to receive legal paperwork for forming trade unions (thus facilitating easy firing of organizers) and taking the companies' side in conciliation processes and in collective bargaining of work contracts. They have even punished "rebellious" trade unions by withholding the union education payments (trade unions have a right to receive funds for training under the Educational Security Law).

## **B. Principal changes in the content of labor laws**

### **1. The Labor Code (1971) and Political Constitution (1972)**

Adopted in December 1971, the **Labor Code** established principles like the unalterable nature of labor rights; the right to job stability and continuity; the right to unionize; and the right to collective bargaining, among others. The **Political Constitution**, adopted in 1972 and still in effect, ratified these principles. Its Third Chapter is dedicated to labor. **The labor rights principles established by the Constitution** are:

- Work as an individual's right and duty (Article 60)
- The right to receive a minimum wage -- to be adjusted periodically -- sufficient to cover a family's normal needs (Art. 61-62)
- The right to equal pay for equal work (Art. 63)
- The right to unionize, with the State having no more than 30 days to recognize new trade unions and no legal capacity to dissolve them (except in cases where a court ruling determines they are no longer fulfilling their purposes) (Art. 64)
- The right to strike (Art. 65)
- A maximum workday of 8 hours and maximum work-week of 48 hours (for minors (14-18 years old), the workday must not exceed 6 hours -- and work by those under 14 years of age is prohibited, as is nighttime work by those under 16) (Art. 66)
- The nullity of any agreement or contract that implies forfeiture of one's rights (Art. 67)
- Protections for motherhood, prohibiting the firing of mothers within one year after childbirth and establishing the right to paid maternal leave (6 weeks before childbirth and up to 8 weeks following it) (Art. 68)

- Prohibition of hiring foreign workers when doing so could lower working conditions for Panamánians (Art. 69)
- No worker can be fired without an established just cause (Art. 70)
- The right to free professional education for workers (Art. 71)
- The right to trade union training provided by the State and trade union organizations (Art. 72)
- Disputes between capital and labor will be submitted to the judicial authorities (Art. 73)
- The establishment of laws regulating relations between capital and labor according to the criteria of "social justice and securing special State protection benefitting workers" (Art. 74)
- Securing the aforementioned rights and protection as "minimum standards benefitting workers" (Art. 75)

As has already been stated, the Political Constitution consecrated these basic labor rights in accordance with the Labor Code, which had been drawn up and put into effect a few months before the Constitutional Assembly began in 1972 and which already contained these basic rights. In this case the process developed in reverse of what legal logic indicates: the Labor Code was the source that inspired a chapter of the Political Constitution, when the normal process would be the opposite.

But the original Panamánian Labor Code remained in effect as such for only five years. A process of systematic reforms and amendments began in 1975-76, and it continues today. Unfortunately the majority of these reforms have not served to expand or improve workers' social rights but to reduce them.

In some case reforms to the Labor Code have had unconstitutional aspects, since the Constitutional principles on these matters have remained unchanged while labor legislation -- which is supposed to develop these principles -- has been modified. For example, on at least two occasions the right to collective bargaining of work contracts has been provisionally suspended in order to deal with economic and political demands, without Constitutional authorization.

This regressive process in Panamánian labor law has taken place because of changes in the doctrinal orientation of the Panamánian State's economic policy. Through the influence of international institutions, the Panamánian State has dropped Keynesian views focused on social equity and legal protection for the destitute in favor of increasingly neoliberal approaches based on establishing the market's rule of law over and above any protective role for the State. This doctrinal orientation is evident in the reforms to the Labor Code made through amendments in 1976, 1981, 1990, 1993 and 1995, which we will now summarize.

## **2. The 1976 Reform**

As was stated in the historical overview, the first reform of the Labor Code came in **Law 95 of December 31, 1976**. Its motive was to offer the business management sector certain

incentives that would supposedly help them weather the 1973-75 economic crisis. Law 95 established the following reforms:

- Additional payments to a worker (Christmas bonuses, company profit-sharing, etc.) do not constitute part of the worker's salary.
- Employers are authorized to not fulfill salary agreements they made in collective bargaining agreements, based on their company's economic situation. It is left up to the company's own unilateral judgment if this is necessary.
- Negotiation of new collective work contracts was suspended for two years (which became four years in practice).
- Obligatory rehiring of workers that labor courts rule were unjustly fired was eliminated. Such workers could only hope to receive a payment for damages, not recover their jobs (Abdallah, 2000).

### **3. The 1981 Reform**

Pressure from the trade union movement made this new legislation necessary. In January 1980 trade unionists carried out a general strike led by the National Council of Organized Workers (CONATO) demanding restoration of the right to collective bargaining of work contracts. There was also an explosion of strikes at individual companies (14 in 1979 and 23 in 1980), raising the number of disputes by 400% over the rate during the first half of the 1970s.

This situation resulted in **Law 8 of April 30, 1981**, which reestablished the right to collective bargaining of work contracts. This right had been suspended by Law 95 of 1976. However, Law 8 made an exception for new companies, which could suspend this right for up to two years based on a unilateral decision by management. This applied to all sectors except construction.

Law 8 of 1981 maintained the decisions in Law 95 of 1976 concerning excluding additional benefits from the salary and authorizing unjustified firings by granting management the ability to only pay for damages when such cases arise in the domestic sector, the small agricultural or fishing business sector, the industrial sector, the commercial sector, or for any workers with less than two years on the job. The amount of the payment would be set by Reconciliation and Judgment Councils.

### **4. The 1986 Reform**

As a result of the so-called "debt crisis" and guidance from the International Monetary Fund and World Bank, "structural adjustment" measures began to be applied in Panamá. The first Adjustment Loan was signed in 1983 and known by its English initials SAL I (Structural Adjustment Loan I). In essence SAL I recommended:

- 1) Public sector cuts
- 2) Reorganization of the incentives structure for industrial exports, eliminating subsidies and exonerations, compensated for by improving conditions for the exploitation of labor force

- 3) Reorganization of the agricultural and fishing sector, modifying the previous system of subsidies and price supports, also carrying by way of compensation improved conditions for exploitation of workers.

But economic reforms were blocked by the political and social crisis of 1984, under the administration of Nicolás Ardito Barletta. Barletta's crisis had two fundamental components: electoral fraud accusations against General Noriega, for imposing this President over the opposition candidate Arnulfo Arias; and the wave of strikes begun in November 1984 in response to Barletta's economic measures. The strikes did not end until his fall in August 1985. This situation halted structural adjustment and would bring Barletta's successor in 1986, President Eric Del Valle. Del Valle would promote labor reforms that shed the orientation of SAL I.

In this context, in the middle of a ten day general strike, the Legislative Assembly and Executive approved **Law 1 of March 17, 1986**. This reformed the Labor Code in the following ways: the criteria inherited from the 1976 and 1981 reforms concerning not considering bonuses, discounts, "thirteenth month" payments, etc. part of salary were expanded. "Neither uses and customs nor working conditions" (Art. 5) would any longer be considered part of the salary either (Abdallah, 2000).

Law 1 of 1986 also, in Article 2, reduced remuneration for overtime work, limiting the additional payment for overtime to 25% of normal wages (previously such payment went as high as 75% of normal wages, depending on whether it was for nighttime or daytime work or was for work on holidays) for small industrial and agricultural businesses, including those in the export sector. This reform also modified Article 79 of the Labor Code, establishing that no work contract in the agricultural sector would be considered of indefinite duration -- thus creating a new reason for "justified" firing. It likewise expanded the "trial period" for new workers, during which employers can rescind the offer of work without just cause, from two weeks -- as Article 78 of the Labor Code stipulated -- to three months.

Article 7 of this reform excluded those who work at home from the Labor Code, no longer considering them workers. It also modified the limitations on overtime hours stipulated in Article 35 of the Labor Code, raising the amount of allowed overtime by as much as 100% for the agricultural and fishing sector, small businesses, and export industries.

## **5. The 1990 and 1993 Reforms**

As we pointed out in the historical overview, the political crisis during General Noriega's regime in the 1980s was resolved by the December 20, 1989 invasion by the United States. In July 1990, a Donation Convention was signed. In it, the United States agreed to pay for some of the economic damages caused by the invasion and subsequent looting if the Guillermo Endaras administration promised to restart a structural adjustment program with international financial institutions. Labor reforms of the period developed within this context.

The goal of **Law 16 of November 6, 1990** was to create a special set of rules for export processing zones -- a euphemism referring to the installation of "*maquila*" businesses. Neoliberal globalization's heat in the 1980s and 1990s brought the birth of this form of hyper-exploitation of labor. To stimulate the establishment in Panamá of companies of this type, legislation was created that essentially located them outside the Labor Code. The "processing zones" would have to be built on the former U.S. military bases located in the Canal Zone, which were beginning to return to Panamanian sovereignty under the Torrijos-Carter Treaties.

Under Law 16 of 1990:

- Wages are restricted. All types of bonuses are not to be taken into account when calculating social security benefits, "thirteenth month" pay, etc.
- The law's wording prioritizes defined-term contracts over contracts with indefinite duration, turning the latter into the exception rather than the rule.
- For the first time in Panamá, the principle is established that an employer may put an end to a labor relationship (that is, may fire a worker) when there are negative fluctuations in export markets.
- The right to vacations is affected. The employer is authorized to determine when to grant this right, independent of whether the worker has fulfilled the minimum amount of work-time required to gain access to this right. The employer is also authorized to divide vacation time into two blocks.
- Workers' flexibility is permitted, since the company is authorized to assign a worker different tasks than those for which the worker was hired.
- Finally, the right to collective bargaining of work contracts is suspended until the fourth year of a company's operations.

Law 16 of November 1990 concerning export processing zones was replaced and made worse (from the standpoint of labor law) by **Decree-Law 2 of January 3, 1996**, which expanded the flexibilization of labor in terms of salary, number, function, time, etc. (Abdullah, 2000). Under this reform:

- Not only will productivity bonuses and other benefits be kept outside the definition of salary but also the possibility is introduced of companies adjusting and decreasing salaries based on their financial situation. This violates the principle of already acquired rights (Art. 9).
- Maximum additional pay for overtime hours is maintained at 25%.
- Flexibility of work-function is secured (Art. 13).
- Employers may freely determine what day to assign as the week's day of rest and when wage-earners are allowed to take vacations. Employers also have the ability to divide vacation time into fractions.
- The use of temporary contracts is generalized, extending them -- and with them, the possibility of firing workers -- to three years. In practice, this prohibits use of indefinite contracts.
- Employers may "justly" fire workers based on the international market's fluctuations (Art. 16).
- The prohibition of collective bargaining of work contracts is expanded from three to five years (Art. 17).

- Obligatory arbitration of all conflict is imposed (Art. 18-26).
- The trade union protections established in Article 441 of the Labor Code -- aimed at preventing retaliatory firings by employers during negotiations -- are omitted.
- The right to strike is in effect violated, since arbitration and reconciliation processes are made obligatory (Art. 27) and a wide range of situations is stipulated for which the right to strike is prohibited via restrictions (Art. 29) -- and this range can be expanded by the Ministry of Labor.

According to Abdallah, this Decree-Law was then modified by another (February 26, 1996) that revoked the clauses restricting the right to collective bargaining of work contracts. This modification came as an attempt to partially address the trade union movement's denunciation that all the reform legislation violates flagrantly not only the Panamanian Political Constitution and Labor Code but also ILO Conventions 97 and 98, which were duly signed by the Republic of Panamá.

Currently (in 2004) there are 12 licensed export processing zones in Panamá, but only some of these (Corozal, Albrook, Panexport, Proinexport, Telepuerto Panamá, S.A. and Schiobon) are in operation. As was stated in the preceding historical overview, their progress has been limited by competition from similar zones in other Central American countries that have relative advantages over the Panamanian zones because they use national currencies. Such currencies allow for payment of lower salaries relative to Panamá, where the U.S. dollar circulates freely. Moreover, in some areas re-exporting opportunities are taken by the Free Zone of Colón, which has its own special laws for labor and its own fiscal incentives. Its owners view competition from the new special zones with apprehension.

Mireya Moscoso's government recently presented the draft of a new project, Law 43, that would expand the fiscal incentives for the export processing zones and seek to create three new zones. The new measures would expand fiscal and labor concessions even further, extending them to commercial activities under the name of "World Trade Zones." This law has met with opposition from the Colón Free Zone Users' Association and from technocrats in the Ministry of Economy and Finance. The latter point out that, according to World Trade Organization agreements, such special zones must be eliminated by 2007 (Campos, 2004).

The goal of **Law 2 of January 13, 1993** was to reestablish the right to collective bargaining of work contracts, which had been suspended during the years of crisis, economic sanctions, and the economic effects of the 1989 U.S. invasion. However, this law went further and modified Article 405 of the Labor Code, authorizing trade unions that are negotiating collective contracts to receive obligatory dues from all workers who will benefit from the contract. In addition, the law limited the plurality of trade unions by permitting companies to choose to negotiate collective contracts with only the trade union with the largest membership among their employees, leaving aside demands made by any other smaller unions.

## 6. The 1995 Reform

Reforms were limited in scope during the administration of Guillermo Endara (1989-1994), which was still strongly marked by the political crisis and invasion. A strict neoliberal economic program was initiated under Endara's successor, Ernesto Pérez Balladares (1994-1999). This economic program was generally known as "The Chapman Plan," in reference to Minister of Economy and Finance Guillermo Chapman.

Rather than propose public policies focused on promotion and protection of jobs and salaries, the Chapman Plan sought "to eliminate the distortions State intervention creates in the economy," leaving the market free to resolve problems that accompany development. After analyzing the poverty and social disparities in jobs and salaries prevailing in the country, the Plan states: "Part of the explanation for this can be found in the high level of structural unemployment (which is manifest despite growth of production) and in the low level of buying power provided by salaries."

The Chapman Plan blames this situation on a series of factors, such as "economic inefficiency." Economic inefficiency, the Plan states, is characterized by excessive incentives to industry, costly public services, protectionism, microeconomic distortions (such as supposed barriers to foreign investment), and inadequate infrastructure. To resolve this situation a series of measures are adopted, including privatization of State utilities. This privatization will supposedly result in reduction of the public deficit and support of the need for labor reform: "The goals of labor policy are: to create conditions necessary for the labor market to achieve a high level of employment; to have laws that are competitive with those of other countries and that attract foreign investments; and to achieve productivity levels that strengthen our competitive position internationally. The achievement of these goals is essential for the modernization of our economy and for overcoming unemployment. In the short term, this requires modifying labor laws."

Over four years, the government's policies affecting employment included a labor reform (1995), massive investment in public works (highways) via concessions, privatization of the principal public utilities (telephones and electricity), and a drastic reduction of import tariffs to 15% ad valorem (November 1997).

The Labor Code reform was approved in **Law 44 of August 12, 1995** and was one of the economic plan's central components. The plan's focus was to make the process of firing workers cheaper for the private sector, limiting to three months the compensation for lost salary that must be paid to workers who have been unjustly fired and eliminating the age bonus (for workers with more than ten years' experience with the company). It replaced the age bonus with unemployment insurance paid out of a fund containing both workers' and owners' contributions.

This reform contained a wide range of other aspects, among which we can mention the disappearance of special State protection of workers from the law's wording. Instead, anew element is introduced: the need to "fairly compensate capital for its investment." Salary

gets tied to criteria of productivity determined by the market's performance. The reform gives primacy to contractual will over established and acquired rights, modifying the Constitutionally established principle of the inalterability of those rights. In this way, Article 39 deals with the possibility of pacts to expand mixed shifts and night shifts and Article 159 accepts the possibility of pacts to expand or reduce the workday (Abdallah, 2000).

Article 142 accepts the possibility of "agreeing to and modifying salary conditions by work, by piece, by commission or by complementary bonuses. Periodic fluctuations in workers' income -- due to variations in production, sales or output -- will not be understood as increases or decreases of salary..." (sic).

Law 45 of 1995 also states that payment of bonuses, premiums and rewards "will be considered as salary only when calculating vacations, motherhood licenses and age bonuses." They will be "exempt from educational security and employer contributions to social security." The law adds that these additions to salary (bonuses, etc.) "will not be considered as customs or uses, nor as conditions for work..."

This law also does harm to the principle of job stability or continuity, by stating in Article 77 that "it will not be considered that a succession of contracts exists in the following cases: 1) when dealing with permanent occupations or posts that are required for a new activity in the company; 2) when dealing with contracts during the employer's, company's or operation's first year; 3) when dealing with types of work agreed upon by the Ministry of Labor and Social Welfare or by the trade union."

In addition, the reform expanded and generalized the trial period, during which the labor relationship can be terminated unilaterally. Originally the Code limited this period to two weeks. The reform expanded it to three months for any activity that "demands special ability or skill" -- without determining this guideline's specific parameters. Likewise, Article 212 expanded the number of workers that can be freely fired if a compensation is paid, without a right to receive "lost wages" if the case is appealed before the Labor Court. Workers with less than two years' experience with a company and permanent workers in small agricultural, fishing, agro-industrial or manufacturing businesses were added to the category of workers susceptible to such firing.

Article 218 expanded the 1986 reform in stating that an employee who appeals to the Labor Court and demonstrates that she or he has been the victim of an unjust firing may demand payment of compensation but that the owner will not be obligated to reinstate the employee. This established a regime of generalized, free firing. This situation was aggravated further by the reduction from 50% to 25% of the required compensation payment in such cases and by elimination of the legal principle that employers may not ever fire more than 10% of their permanent staff in one year.

The reform to Article 229 of the Labor Code supplanted the prior age bonus, payment of which had been obligatory for workers with ten years of continuous work at a company. It replaces this bonus with a "layoffs fund" which only applies to permanent employees.



Given the effects of all the reforms, there are fewer and fewer permanent workers. "For some Panamanian workers, this regulation converts severance pay into an acquired right. However, it also serves as a mechanism employers can use to guarantee flexibility in firing workers without justification" (Abdallah, 2000).

Although Article 39 of this reform sets minimum and maximum limits (30 minutes to 2 hours) for rest periods during the workday, it also authorizes employee and employer to freely agree upon allotment of rest periods for night shifts and mixed shifts "in a way that will not interrupt production."

Article 159 authorizes reduction of the workday "for reasons of a severe national economic crisis, cases of accident or circumstances beyond one's control, duly verified by the administrative labor authorities..." Of course, reduction of the workday brings reduction of wages.

The modification of Article 197a of the Labor Code states: "Orders given by the employer that involve the worker's functional or horizontal mobility will not be considered unilateral changes, as long as the orders are compatible with the worker's position, hierarchical level, aptitude, training and skills....[as long as] the change does not bring reduction of the worker's salary of remuneration." Nor will orders given by employers "due to the organizational needs of the company, work or production, due to variations in the market or technological innovations" be considered unilateral changes. As one can see this permits employers to alter agreed upon working conditions unilaterally.

Concerning trade union freedom, the 1995 reform -- added to legal criteria put in place previously -- affects the collective autonomy which trade union organizations must enjoy according International Labor Organization (ILO) Conventions 87 and 98. The Labor Code already contained a range of regulations through which the State oversees trade unions' operations, some of which we have already cited. But Law 44 added other regulations, namely:

- Article 376, which authorizes the Ministry of Labor to review books containing a trade unions' minutes from meetings, accounting, and names of its associates upon a request by 20% of the trade union's members
- Article 377, which obliges trade unions to deposit their funds in banks
- Article 369, which does not limit the number of members of Boards of Directors nor establish restrictions on their nationality but which limits to 11 the number of Board of Director members that can benefit from the trade union charter's protections
- Article 338, which prohibits a worker from joining more than one trade union of any one type
- Article 405, which permits only one trade union per company to negotiate collective contracts, forcing trade unions to merge or have only the one with the most members recognized

It should be recognized that some advances were made concerning workers of other nationalities participating as trade union members and as Board of Directors members (Art.

347 and 369). And advances were made concerning granting trade unions the right to draw up their statutes and regulations according to their own judgment (Art. 374 and 175). The repeal of restrictions the 1981, 1986 and 1990 reforms had placed on collective bargaining should also be considered advances -- especially for workers in small agricultural businesses and the export processing zones.

In a September 19, 1997 cabinet resolution, the national government called the first half of its reform program (the Chapman Plan) complete and outlined a second phase in a document called "Social Development with Economic Efficiency 1997-1999" (Resolution, 1997). In it they diagnosed the "causes of economic and social problems" as "an ensemble of incentives and regulations that made economic activity unwind, under parameters distinct from those of a competitive market economy." For this reason "the ensemble of economic and social policy measures executed since the end of 1994 was designed, to liberalize the economy and in that way correct the distortions caused by policies of excessive protection of and intervention in the markets..." (Resolution, 1998).

The centerpiece of this ensemble of public policies was stimulation of the market. This was based on confidence that this market stimulation -- as opposed to prior policies of State intervention -- would be the fundamental factor in resolving the country's social problems. For this reason, in recent years Panamá has had no State programs for direct job creation. The only efforts to combat poverty have been of a "focused" nature, carried out through investments by the Social Emergencies Fund.

The program calculates its hopes to combat poverty based on the reasoning that economic liberalization (reduction of tariffs), elimination of subsidies, and free competition will bring a substantial reduction in the cost of basic needs, which will then alleviate social ills. A set of programs, projects and activities was designed with this reasoning as its foundation and was called "A strategic focus for dealing with poverty: 1998-2003." The summary of this strategy states: "The whole group of actions initially contemplated has an estimated cost of more than 1,100 million Balboas.....Of this total, approximately 12.5% goes to Education, 6.5% to Healthcare, 13.5% to Social Compensation Programs, 62.3% to attending to the rural poor, and 5.2% to attending to the urban poor."

Despite the Chapman Plan's aims, the set of neoliberal labor, political and economic reforms carried out in the 1990s had a strongly negative impact on employment and indicators of absolute and relative poverty, as we will show below.

## **8. The 1999-2004 Reforms**

The effects of the 1995 Labor Code reform have been of such great scope that new reforms have not been required since, except in the case of export processing zones which we have already referred to. Despite this, various business sectors have advocated for greater reforms to the Labor Code, requesting elimination of the few social protections that survive.

In terms of labor law, the most recent regulation approved under President Mireya Moscoso was **Law 12 of February 6, 2002**. It "creates incentives for first jobs to be offered to young people in the private sector." Its supposed goal is to resolve one of the greatest problems afflicting the country: high unemployment, falling especially hard on youth. The law gives incentives to companies so that they will hire a limited number of young workers, offering the companies financial incentives and temporary exoneration from various of workers' legal protections.

Article 1 defines as "youth in search of their first jobs" people between 18 and 25 years of age who have not established a labor relationship and are not signed up as contributors to social security. Article 3 establishes "providing work experience to youth" as the purpose of defining this *status* [in English in the Spanish original] and states the procedures required for companies to sign up for this program with MITRADEL. In its third paragraph, Article 3 establishes the duration of these contracts, which cannot be extended, as between three and twelve months.

In affected and indirect language, **this law suspends Articles 67 and 68 of the Labor Code for such contracts. These articles refer to the nullity of any agreement that implies forfeiture of acquired rights and to legal protections for motherhood.** These are considered some of the most basic principles of labor law.

The fourth paragraph of Article 3 establishes that if, once the term of such a contract expires (after one year), the worker continues in the job, then he or she will be considered to be working under a contract of indefinite duration and the protections stipulated in Articles 67 and 68 of the Labor Code will be restored to him or her. Article 4 stipulates that the salary paid cannot be less than the legal minimum, but it also states that the right to payment of an age bonus cannot be acquired through work under such a contract. Article 8 creates a fiscal incentive for the employer, allowing the employer to deduct the total sum of minimum wages and benefits paid for First Employment Contracts during the corresponding fiscal period. These are deductible on the line-item for fiscal benefits on the sworn declaration of income. Article 9 sets the number of First Employment Contracts per company according to the number of workers a company has -- from two contracts for companies with 25 workers up to ten contracts for companies with more than 300 workers holding contracts of indefinite duration.

As can be seen, in reality Law 12 of 2002 does not resolve the problem of unemployment. It only deals with this problem in a momentary way, for a very limited number of young people, and at the cost of total imperilment of their labor rights. Hence it has not had an impact on the high rates of unemployment and underemployment.

### **III. Current law concerning trade union freedom and collective bargaining**

Let us recall that Article 64 the Panamanian Political Constitution maintains as a principle "the right to unionization of employers, wage-earners and professionals of all types, for the

purposes of their economic and social activity." Article 64 adds that the Executive branch of government will have a period of thirty days -- which cannot be extended -- to accept or reject a trade union's registration. The law will regulate trade unions' operation, and a trade union can only be dissolved "the proper court declares in a final ruling that the trade union has separated permanently from its purposes." The only Constitutional limitation on trade union freedom is that "the Boards of Directors of these associations shall be made up of Panamanians only" (Art. 64, final paragraph).

Law 45 of 1967, which ratified International Labor Organization (ILO) **Convention 87**, also forms part of the normative legal framework concerning trade union freedom. However, as has already been stated, these rights to free unionization have been affected by some reforms to the Labor Code. For example, in Law 1 of March 1986, Article 7 excluded people who work at home processing primary materials given to them by companies from the category of "worker," thereby excluding them from their rights. Law 25 of 1992 excluded one sector of workers from enjoyment of indefinite-term contracts for up to the first three years of their employment, limiting their right -- including the right to trade union freedom.

The right to collective bargaining does not appear in the Political Constitution, although some articles of the Constitution establish regulations concerning that right. Among these are: the right to strike (Art. 65); establishment of the maximum workday length (Art. 66); the inalterability of Constitutional principles concerning contracts (Art. 67); legal protections for women workers' motherhood (Art. 68); and submission of disputes to the jurisdiction of labor courts (Art. 73). Panamá's ratification of **ILO Convention 98** in Law 23 of February 1, 1965 forms part of this legal framework concerning collective bargaining of work contracts. Article 4 of this convention establishes the State's responsibility to encourage procedures of voluntary reconciliation and to regulate collective contracts.

Some of the Labor Code reforms described above have affected negatively the right to collective bargaining by modifying some of its original norms. For example, Article 2 of Law 8 of 1981 authorized companies to reduce their personnel based on economic causes, including doing so without verification of the causes by administrative authorities. And Law 44 of 1995 authorizes companies to substitute one benefit agreed to in the collective contract for another.

Although they are no longer in effect, it is important to point out two measures implemented by the Panamanian State adducing reasons of economic crisis, in 1976 and 1990: suspension of the right to collective bargaining and authorization of employers to suspend established commitments.

Panamá's **Labor Code** dedicates its Third Book to regulating "collective relations" of labor -- all the regulations concerning formation and operations of trade unions (in Title I), collective bargaining of work contracts (Title II), collective disputes (Title III), and the right to strike (Title IV). These aspects are regulated in extensive detail: the topic of trade union freedom takes up Articles 331-397; the topic of collective bargaining of work

contracts takes up Articles 398-410; the topic of collective disputes takes up Article 417-474; and the topic of strikes takes up Articles 475-519.

## 1. **Laws in force concerning trade union freedom**

Concerning **trade union freedom**, the Panamanian **Labor Code** establishes the following fundamental principles, among others:

- "The formation of trade unions" is declared "a matter of public interest, as it is an effective manner to contribute to the country's sustenance, economic development, social development, popular culture and democracy" (Art. 334)
- The right to form trade unions and become a member of them, without prior authorization (Art. 335)
- Independent workers are permitted to form trade unions, as long as they do not use outside labor in their work (Art. 336)
- The right of minors (between 14 and 18 years of age) to join trade unions, but not to be part of their Boards of Directors (Art. 337)
- Prohibition of simultaneous membership in multiple trade unions of the same type and activity (Art. 338)
- The only requirements for membership, established in trade unions' statutes, will refer to the post, profession or specialty or to the type of company; and the only restriction that can be made is against representatives of the company or people in the company's confidence (Art. 339)
- The minimum number of workers required to form a trade union is set at 40 (Art. 344)
- The right to form company-wide trade unions when various unions operate as part of an economic unit (Art. 345)
- Prohibition of more than one trade union per company (Art. 346)
- Originally it was established that at least 75% of a trade union's members must be Panamanians (Art. 347), but this was repealed by Law 44 of August 12, 1995
- Trade union registration will be submitted on plain paper, tax-free, at the Ministry of Labor (Art. 351)
- The Ministry of Labor has 15 days (a period which cannot be extended) to respond to any trade union registration that contained all the necessary elements (constitutional papers; founding members' names, personal identity numbers and signatures) (Art. 352)
- At the request of more than 20 employees of a company, a trade union charter's protections can be granted during the thirty day period in which the trade union's registration is completed in accordance with Art. 352

Chapter 5 establishes measures for the protection of trade unions:

- The Ministry of Labor "is obligated to encourage the formation of trade unions.....wherever they would not otherwise be" (Art. 379)
- The Ministry of Labor is obligated to provide technical and financial assistance to trade unions (Art. 380)

- The protections of a trade union charter are guaranteed for members of trade unions in formation, for directors and trade union representatives (Art. 381)
- A worker protected by a trade union charter cannot be fired except through the ruling of a labor court, based on a just cause acknowledged in the law (Art. 383)
- A note written to the Labor Directorate will suffice to give a trade union in formation protection under a charter (Art 385)
- Unfair practices against trade unionism by employers are defined (Art. 388)
- Fines for infraction of these regulations are established as between 100 and 2000 Balboas (Dollars) (Art. 389)
- Only fines between 10 and 200 Balboas can be imposed on trade unions as sanctions, or the trade unions can be dissolved (Art. 390)
- Fines will only be imposed when the trade union does not correct problems with its documents or when it infringes on Art. 346, which prohibits the existence of two trade unions in the same company (Art 391)
- Dissolution will occur only when the trade union is not complying with the aims established by law, when it has fewer than the required number of members, or when it is proved that the employer controls the trade union (Art. 392)
- The procedure for dissolving a trade union is described (Art. 395 to 397)

## **2. Laws in force concerning collective bargaining**

Regarding the right to **Collective Bargaining of Work Contracts**, the Labor Code outlines the following basic norms:

- A Collective Work Contract is defined as “any written agreement regarding conditions of labor and employment that is agreed upon by an employer (or a group of employers, an employers' organization, or various employers' organizations) on one side, and on the other side by a trade union (or various trade unions, federations, confederations, or workers' centers)” (Art. 398)
- The Collective Contract is established as having three parties, including the Ministry of Labor (Art. 399)
- The methodology for proving the legal status of each of the negotiating parties is established (Art. 400)
- The employer is obligated to enter negotiations if the trade union requests it; and the trade union has the right to strike “once the conciliation process has ended” if the employer refuses to negotiate (Art. 401)
- The methodology is established for determining which trade union has the right to negotiate the Collective Contract, starting with the criterion of having the greatest number of members in the company (Art. 402)
- The minimum content of Collective Contracts is established, including stipulations concerning working conditions (numeral 4) and duration (numeral 5) (Art. 403)
- The Collective Contract's clauses will apply to all categories of workers, unless the Collective Contract stipulates otherwise (Art. 404)

- The agreement's effects will apply to all workers, including non-trade union members; non-trade union members will be obligated to pay the trade union's ordinary and extraordinary dues (Art. 405)
- A Collective Contract cannot establish conditions that are less favorable for workers than those contained in legislation and in previous contracts (Art. 406)
- The Contract will apply to future employees of the company (Art. 407)
- Stipulations in individual contracts that contravene the Collective Contract will be nullified (Art. 408)
- The duration of Collective Contracts will be no less than two years and no more than four years (Art. 410)
- When this term expires, the contract will remain in effect until another contract is negotiated (Art. 412)
- If the trade union is dissolved, the Collective Contract will continue to apply, unless a new trade union agrees upon another (Art. 413)
- In the case of one employer being replaced by another, the latter shall respect the agreements in the prevailing Collective Contract (Art. 415)

**Title III** addresses the topic of “**collective disputes**” in labor, which are differentiated from legal conflicts or conflicts over rights (which deal with the interpretation of a norm or the interpretation of economic conflicts produced by collective bargaining of work contracts) (Art. 417-422). Title III regulates the dispute process in three phases: direct resolution (Art. 423-425), presentation of a list of demands (Art. 426-431), and conciliation mediated by the Ministry of Labor (Art. 432-447). This last phase includes strike-warning declarations if conciliation fails (Art. 448-451) and arbitration at the request of both parties (or upon the workers' request during a strike, or obligatorily in disputes at public service companies) (Art. 452-474).

The **right to strike** is regulated in **Title IV**:

- A strike is defined as “temporary work stoppage in one or more businesses, establishments or companies, decided upon and carried out by a group of five or more workers in accordance with the legal dispositions” (Art. 475).
- A strike is defined as legal (Art. 476) if the workers have exhausted conciliation procedures, if those who join it represent the majority of the company's workers, if the workers' aims fit with those defined by Art. 480 (obtaining improved working conditions or collective contracts; responding to violations of a collective contract or of the law), if they give prior warning, if they make their declaration through a General Assembly (Art. 489), and -- in the case of public service businesses -- they respect the established limitations (Art. 487-488).
- In the case of a trade union-only strike, approval by more than 60% of members is required (Art. 477).
- In the case of a strike by all workers in the company, a simple majority in the General Assembly is sufficient (Art. 489).
- The right to strike cannot be waived and any collective contract or agreement that implies its limitation is nullified (Art. 482).

- The right to strike in solidarity is recognized (Art. 483), but is limited to workers within the same branch or profession (Art. 484).
- Public service businesses are defined as communications, transportation, electricity, sanitation, hospitals, etc. (Art. 486). During strikes, these businesses must continue to function at least 20-30% of their normal capacity (Art. 487).
- Declaration of a strike must occur within 20 business days after the termination of conciliation procedures (Art. 490).
- Declaration of a strike implies closure of the company by the General Directorate on Labor, suspension of the contracts of those involved, and prohibition of the employer hiring new workers to replace the strikers (Art. 493)
- Article 496 guarantees strikers the right to demonstrate and the right to publicize their strike.
- Articles 498-591 establish procedures to be taken against illegal strikes.

#### **IV. Principal obstacles to compliance with labor law and examples of violation of labor rights**

The labor reforms accumulated over 25 years have produced a generalized situation of lack of protection for Panamanian workers. Compliance with the principles of justice for workers in general and the principles of trade union freedom and the right to collective bargaining in particular faces an enormous number of obstacles.

These obstacles can be found in the laws themselves, thanks to an accumulation of neoliberal reforms that impose free market principles onto worker-employer relations and shift the balance in favor of employers. These obstacles have been aggravated by the corrupt political practices of public servants who ought to be enforcing laws and protecting workers.

Finally, there are practical and cultural obstacles to compliance. The working masses may not know their rights, or may feel that it is very difficult to have those rights respected, or may fear being fired (and may prefer losing some rights to losing their job, which often supports an entire family).

It must be added that these obstacles are all closely related to one another. Those that affect trade union freedom are related to those that affect the right to collective bargaining, producing a chain in which some affect others. For example, the worst labor vulnerability problem is job instability, which is the result of reforms that facilitate lay-offs. For fear of being fired, workers are not motivated to organize. This situation then weakens trade union organization, making it even more difficult to accumulate the strength needed for collective bargaining to achieve workers' goals. No one even mentions the capacity to call for a strike within the framework of collective bargaining -- a fact that employers understand and use to impose their conditions.



The aforementioned applies to large industry, in which the number of workers who are trade union members does not usually surpass the historic limit of 20% (Turner, 1982). In midsize and small industry as well as in export processing zones and the reexportation sector, trade unions are almost entirely non-existent for the reason previously stated, job instability.

Over 62 years, from 1940 to 2002, MITRADEL recognized 379 social, employer, and trade union organizations: 7 from 1944-49, 18 from 1950-59, 74 from 1960-69, 115 from 1970-79, 49 from 1980-89, 113 from 1990-99, and 3 from 2000-2002. Of this total, 7 are Confederations or Centrals, grouped under the **National Council of Organized Workers (CONATO)**. CONATO operates as a coordinating body and as an embryo of the Single Central (which has never been formally established). There are two other federations called the **Union Federation of the Panamanian Republic** and **FENASEP** (a confederation of the public employees' trade unions).

During the last two years (2002-2004), 32 new unions have requested legal status. 15 have been approved: 6 business unions, 3 guilds, 5 industrial unions, and one federation. It is interesting to note that, of the 201 director positions in the Centrals, Confederations and Federations, only 40 (20%) are occupied by women -- a fact that demonstrates the low participation by women in trade union activity. There is a sexist slant against those women who make up 20% of Board of Directors members. They are often placed in the Secretary of Women's Affairs post. Only one woman occupies the highest ranking position of Secretary General in a union.

Between the years 2001 and 2002, 150 Collective Contracts were signed in Panamá. These contracts benefited 43,452 workers, out of a total national workforce of 1,111,661 wage-earners. Thus barely 4% of Panamanian workers are covered by the right to collective bargaining of work contracts. Of the 150 Collective Contracts, 99 were resolved directly (between the trade union and company), 44 were resolved during the conciliation phase (mediated by MITRADEL), and 7 conflicts ended with arbitration rulings. The majority of the Collective Contracts were signed for a duration of four years (120), followed by contracts with three years of duration (23), and only a small number with two years of duration.

The majority of these collective contracts were reached in the manufacturing industry (56), followed by commercial activities (20); construction (17); fishing (14); hotels and restaurants (12); transportation and storage (9); agriculture (8); electricity, gas and water (4); real estate activities (3); other community activities (3); education (2); and health and social services (2).

## **1. Principal obstacles to compliance with legislation concerning trade union freedom**

### **a. Legal obstacles**

To begin with, formal limitations on the right to unionize do not exist. As has been seen, this right is guaranteed as a Constitutional principle and elaborated in the Labor Code.

The two legal factors most affecting unionization are indirect: 1) **widespread use of temporary contracts** (limited-term contracts) and the consequent decline of the number of workers holding indefinite contracts (to the point that indefinite contracts have practically disappeared); and 2) **the labor reforms of 1986 and 1995, which facilitated the firing of workers** and limited the amount of compensation to be paid for firing a worker without just cause (establishing a maximum of three months lost wages). These reforms were allegedly necessary because of economic factors such as bankruptcy.

On November 10, 2001, **Julia Suira**, a **National Council of Organized Workers (CONATO)** trade union leader in the textile sector, told the national media that the labor force in that sector had been reduced “from 6,000 to 3,000 workers...as a consequence of neoliberal measures.” Suira denounced large textile industries such as **Everfit**, **Van Heusen** and **Durex** for significantly cutting employment while alleging “economic reasons.” Durex, she said, had 400 workers at its plant prior to 2000, but by November 2001 only employed 120 workers; and **Confecciones Veraguas** had recently requested authorization from MITRADEL to fire 50% of its workers. The labor force in the textile industry -- an industry known for frequently operating as *maquilas* -- is almost entirely female.

It is significant that **MITRADEL's General Director for Labor** himself, **Luis Cedeño Merel**, told a journalist for the daily newspaper **El Panamá América** (December 3, 2001) he had received an undetermined number of requests to lay off employees (for “economic reasons”) from some companies, reaching as much as 40-70% percent of the labor force that year.

The **Sugar Cane Workers' Trade Union**, whose members work three months per year harvesting sugar cane, was especially hard hit by Law 1 of 1986. This reform excluded seasonal contracts in consecutive years from the definition of indefinite-term contracts. Prior to the reform such contracts had been recognized as indefinite-term. This has weakened the trade union's membership and its capacity for struggle. Unionists in this sector have not carried out a general strike since 1962.

#### **b. Political obstacles**

An indirect manner of affecting trade union freedom has been used against the **Trade Union of Bank Workers** -- namely, acts of omission by the authorities. The union first requested its legal status in 1973, yet to date MITRADEL has not recognized it. There are no formal or legal reasons for this act of omission. For 30 years this trade union has not been able to get past the phase of “trade union in formation.” The reason for this is the Panamanian State's policy of promoting the country as a fiscal paradise, with few prerequisites for foreign and Panamanian banks to set up operations in the so-called Panamá Banking Center.

On July 31, 2000 there was an incident at the MITRADEL's General Directorate for Labor. A group of workers from the **Lencera Khafif Hermanos, S.A. textile company**, members

of the **Clothing Industry Employees' Trade Union (STIVA)**, arrived to file a complaint for failure to fulfill a labor contract. The director of this agency refused to accept it, alleging reasons of "wording." In response to this unusual decision -- which contravened Article 433 of the Labor Code, which prohibits the authorities from refusing a complaint -- the workers proceeded to seize the office, supported by colleagues from the **Single Construction Workers' Trade Union (SUNTRACSS)**. Later they were pushed out by the police and accused of "kidnapping."

Although such serious charges were not brought against them, the company took advantage of the situation to request authorization to fire all the workers involved in the complaint. The company alleged "economic reasons" for the firings. The former Minister of Labor, businessman Joaquín Vallarino, consented.

Another important case was the conflict at the **Chorrera Textiles** company, which led to a strike in September 1999. The company had failed to pay salaries on time and owed workers six "thirteenth month" consignments. It then fired six employees and suspended two trade union leaders for holding a trade union meeting. This led 138 workers, the majority of them women, to declare a strike. In response, rather than replying to the workers' demands, the company attempted to hire new workers to replace those on strike. To stop this, on September 27 the workers closed the company with padlocks. MITRADEL then intervened to force the workers to open the doors.

**Mariano Mena**, Secretary General of the **General Confederation of Panamanian Workers (CGTP)**, denounced the company's maneuvers and those of MITRADEL as "a mechanism of delay, to bring the strikers to a state of exhaustion." The Ministry of Labor's attitude favored the company's owners -- who later declared bankruptcy, closing their operations without acknowledging its debts and bringing about the trade union's disappearance.

### c. Practical obstacles

The widespread use of limited-term contracts affects trade union freedom. It allows workers to be fired and rehired indefinitely, without them ever achieving permanent status or, through it, the possibility of forming or joining a trade union. As we have already pointed out, workers fear being fired more than anything. They will do anything -- in vain -- to prevent being fired, and they are thoroughly aware of the fact that forming or joining a trade union could cause their employer to terminate their labor relationship. Although this may not be acknowledged and it certainly is not legal, it is a customary practice among Panamanian business owners.

This form of making a mockery of the right to unionize -- among other rights -- through widespread use of defined-term contracts has especially affected the **Commercial Workers' Trade Union**. This trade union, representing workers in one of the country's primary economic sectors, has practically disappeared. It was one of the country's most powerful trade unions through the 1970s. This situation also affects *maquila* workers, especially in textiles, in the export processing zones and Colón Free Zone. Even though the

Colón Free Zone is the most important commercial sector (re-exportation) in the country, with business of more than 10 billion dollars per year, there is not a single trade union in it.

## **2. Principal obstacles to compliance with laws concerning collective bargaining**

### **a. Legal obstacles**

The new labor laws are clearly inequitable and they clearly favor employers. Employers are using these laws, ultimately, to impose precarious conditions for workers. Temporary contracts predominate, working conditions worsen, and firing workers is made easier -- especially using the explanation of "economic reasons," which has been turned into a just cause for breaking a contract.

Linked to these, another factor affecting workers' rights is gaps in the law -- concerning such fundamental issues as the procedure for covering workers' benefits when a company declares bankruptcy. Usually civil law dictates that outside creditors cover a company's standing external obligations first, making workers' right to lost wages, social security payments, vacations and "thirteenth month" pay a lesser priority. Since they are the last to collect, workers generally lose the better part of these rights.

Another example of legal gaps that causes great harm to workers is illicit appropriation of social security payments. Such appropriation affects not only the right to healthcare but also workers' retirement benefits. Current law considers this act as an administrative error to be punished with a fine -- and the fine is not even paid.

The former director of the Social Security Fund, Professor Juan Jované -- who was dismissed in September 2003 by President Mireya Moscoso -- repeatedly denounced this illicit act, due to which the private sector owes more than 100 million dollars to the Social Security Fund. To resolve this problem he proposed a legal reform that would castigate such fraud as a punishable crime. As a result, the business sector requested his dismissal and the government complied.

The **Supreme Court of Justice** has made itself an accomplice of these anti-worker practices, not only accepting appeals brought by companies to evade trade unions' complaints but also recently establishing a precedent by rejecting a case brought by the worker **Rosendo Moreno** against the company **La Llave Dorada, S.A.** in which he demanded payment of overtime hours worked and not paid. According to the Court the worker needed to present physical proof -- which he did not possess -- that he worked those overtime hours. Thus the Court put the burden of proof on the worker and removed it from the company.

### **b. Political obstacles**

There have also been unfair practices on the part of Ministry of Labor and Job Development (MITRADEL) authorities. The Ministry is now directly in the hands of the business sector, incapacitating it to fulfill its responsibility of protecting workers' rights. Common examples of this are: refusing to receive collective bargaining demands at critical moments; permitting owners to fire workers just before a trade union charter's protection goes into effect; refusing to send labor inspectors to companies denounced for non-compliance, alleging "a lack of vehicles"; and rigging reports on companies to hide legal violations.

An example of MITRADEL partiality toward employers occurred in November 2002, when members of the **Vacamonte Port Maritime Workers' Union** declared a strike against the shrimp companies in that area. The workers demanded payment of "thirteenth month" benefits that were delayed or not paid, payment of salaries during the closed season when shrimping is prohibited, and an adjustment of their salaries. MITRADEL declared the strike illegal, alleging that two lists of demands had been presented by two separate trade unions. "Neither of the trade unions presented itself at the port to carry out a count; instead, one of them brought to MITRADEL a letter that was inadmissible, declaring a strike when doing so was not permitted due to a lack of negotiation," said the Ministry's Secretary General, Juan Antonio Ledezma. The business owners, for their part, took advantage of this situation to present an appeal seeking Constitutional protections, which the Supreme Court of Justice accepted -- thus making a mockery of the idea of compliance with the union's demands.

### **c. Practical obstacles**

MITRADEL's Director General for Labor Luis Cedeño Merel acknowledged that the usual "trend" of problems workers denounced before his agency was: "failure to deduct the appropriate sums of voluntary payments made to acquired credits, reductions of the workday, and delays -- beyond the timeframes stipulated by law -- in payment of the thirteenth month."

The **declaration of bankruptcy** is also becoming a widespread means by which companies evade their responsibilities to labor. The companies close and fire all personnel, many times failing to pay the entirety of benefits they owe. Then they reopen under a new trade name, under which **they fail to recognize the Collective Contract and force the company's trade union into disappearance**. This type of unfair practice, permitted by MITRADEL, has been denounced at various companies, including **Fotokina, Universal Plywood, Mosaicos Panamá, La Predilecta, Agromarina S. A. and the aforementioned Confecciones Veraguenses**.

Another mechanism companies use to evade their obligations to labor is **subcontracting** -- that is, passing parts of a task off to smaller companies they hire. In this way, by fragmenting a job into various small companies, the owners take advantage of laws that are more permissive towards small and medium-sized companies, not only in terms of labor relations but in fiscal matters. Thus subcontracting is another way to promote use of

temporary contracts that impede organization of trade unions. It also impedes collective bargaining, since workers contributing to a single project are fragmented into many various companies.

**Julio Camaño**, the press and public relations secretary for the **Single Construction Workers' Trade Union (SUNTRACSS)** denounced on October 25, 2002: "Today the main problems workers face in this sector are those related to security benefits, payment of social security, and health measures." The SUNTRACSS leader also denounced that workers have been "orphaned by Social Security Fund inspectors, who claim they lack vehicles to carry out inspections." When the trade union offers its own vehicles, both Social Security Fund officials and MITRADEL officials refuse them. Camaño added that, when inspections are in fact carried out, they are "rigged" in favor of the companies.

The **Trade Union for Workers in Panamá's Electrical Industry and Related Industries (SITIESPA)** has also denounced companies' creation and promotion of parallel unions in order to disregard the right to collective bargaining or to negotiate with a trade union that is in line with the company. On January 13, 2000 José Arosemena, SITIESPA's Secretary General, denounced the companies **Metro Oeste** and **EDEMET-EDECHI** -- both subsidiaries of the Spanish transnational company **UNIÓN FENOSA** -- for promoting two new trade unions and attempting to not recognize SITIESPA despite its 50 year history. Arosemena stated that the company's own personnel director not only sponsors the new trade unions but has even torn down SITIESPA documents from murals and threatened personnel. At the same time, the company was firing workers and not recognizing the Collective Contract.

The examples cited are a few cases among hundreds that could be mentioned. They demonstrate that, on matters of labor rights, legal insecurity has been enshrined in Panamá. This insecurity is exacerbated by MITRADEL functionaries and judicial authorities who are openly partial to the business sector.

## **V. Panamanian laws concerning the elimination of labor discrimination**

According to the International Labor Organization, discrimination can be direct or indirect: *"There is direct discrimination when law or practice treats men and women differently. For example, a law that does not allow women to sign contracts is directly discriminatory. Indirect discrimination includes norms and practices that seem neutral but that in fact establish discrimination against women or disfavor women. This occurs when, for example, useless requirements of height or weight are set that favor men" (ILO, 1994).*

Thus even though in our countries discrimination based on sex is illegal and classified in national laws (as we will see in this section), in practice women experience various kinds of discrimination in their work environments, despite the legal advances that have been made.

Article 1 of Convention 111, concerning discrimination in employment or occupation, is very clear:

***"1. For the purpose of this Convention the term "discrimination" includes:***

- (a) Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;***
- (b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies." (ILO, 1994)***

The Republic of Panamá is a signatory to the **Declaration on the Elimination of Discrimination against Women**, proclaimed by the U.N. General Assembly in Resolution 2263 on November 7, 1967. It states that ***"Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offense against human dignity."***

The Political Constitution of 1972 reaffirms this and is forceful with respect to discrimination, explaining in Article 19 that ***"There will be no protections, personal privileges nor discrimination for reasons of race, nationality, social class, sex, religion or political views."***

In Article 295, referring to State workers, the Constitution establishes that ***"Public servants will be Panamanians, without any discrimination based upon race, sex, religion, belief, or political view. Their appointment and removal shall not be under the absolute and discretionary authority of any institution other than those stipulated by this Constitution. Public servants shall be ruled by the merit system and the stability of their employment shall be based on their competence, loyalty and morality in service."***

The Constitution contains two separate chapters dealing with protections for motherhood:

- "Article 52: The State protects marriage, motherhood and the family. The Law shall determine what concerns marital status. The State shall protect the physical, mental and moral health of youth and guarantee their right to food, healthcare, education, security and social provisions. The elderly and crippled shall likewise have the right to protection."***
- "Article 68: The woman worker's motherhood is protected. She who is in a state of pregnancy cannot be separated from her public or private employment for this reason. For a minimum of six weeks prior to childbirth and a minimum of eight weeks following childbirth, she will enjoy forced rest, with compensation equal to that she receives for her work. And she shall conserve her job and all the rights attached to her contract. Once the working mother returns to her job, she cannot be fired for one year, except in special cases"***

*stipulated in the Law. Furthermore, the Law shall regulate special working conditions for pregnant women."*

Concerning equal pay, the Constitution states, in its Chapter on labor: *"Article 63: To equal work under identical conditions corresponds, always, equal salary or wages, regardless of who the person is that performs the work, without distinctions based on sex, nationality, age, race, social class, political views or religion"*

There are also other legal instruments that point to discrimination against women and compel taking legal measures against it, such as **Law 44 of August 12, 1995**. This law dictates measures to regulate and modernize labor relations; establishes sexual harassment as a just cause for firing and as a prohibited behavior for employers; and establishes regulations favorable to women, such Articles 14, 16, 18 and 28.

Similarly, **Law 9 of June 20, 1994** establishes and regulates the Administrative Career, adds sexual harassment as a direct cause for dismissal, and protects pregnant workers: *"Article 152: Without doing damage to that which is established in the previous article, the following behaviors shall permit immediate dismissal: ..... 10. Sexual harassment."*

This same Law establishes the right to legal protections for motherhood: *"Article 129: Under no circumstances shall the following posts be subject to layoffs: 1. Public servants who are pregnant or under legal protections for motherhood."*

Following childbirth and the period of their special motherhood protections, women have the right to breastfeed their children in a place provided by the company for this purpose. They can take 30 minutes per day for breastfeeding, either in two 15 minute periods or in one 30 minute period. This right is contemplated in **Law 50 of November 23, 1995**, which protects and promotes breastfeeding by mothers.

The principles established in the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW, by its English initials) -- approved by the U.N. General Assembly in Resolution 34-180 of December 18, 1979 and brought into effect on September 3, 1981, having been ratified by Panamá in Law 4 of May 22, 1980 and come into effect in Panamá in June 1981 -- provide the fundamental basis for **Law 4 of January 29, 1999, which establishes equality of opportunities for women**. In this law two norms are established, with programmatic content developed under two headings, concerning equality of opportunities and the rights that emanate from that equality. Among its thirteen chapters is Chapter 5, concerning labor, which establishes the following:

*"Article 11: The public policy of the State, in order to promote equality of job opportunities, shall promote the following actions:*

- 1. Encouragement of women's management skills.*
- 2. Realization of experimental campaigns and programs, aimed at stimulating women's access to new and untraditional occupations.*



3. *Development of a plan for women's employment that will serve as an instrument to support their professional establishment and their employment demands.*
4. *Promotion of cultural change and the destruction of stereotypes related to sex within companies.*
9. *Promotion of women's equal presence in the various posts and levels of public administration, especially in those carrying the greatest responsibility.*
10. *Identification and elimination of discrimination in access to public administration positions.*
11. *Study and prevention of situations of sexual harassment and abuse at work.*
18. *Monitoring of faithful compliance with the legal dispositions concerning labor, denunciation of discriminatory practices and the taking of actions to correct them, as well as guaranteeing protection of the health of women workers who handle highly dangerous materials."*

Executive Decree 53 of June 25, 2002 -- which regulates Law 4 of January 29, 1999, which institutionalized equality of opportunities for women -- states in Chapter 5:

***"Article 38: Private and public employers' requests for pregnancy tests will be considered as discrimination against women, as will taking photographs, establishing age limitations, requesting marital status, application of racist criteria in pay, application of sexist criteria in pay, moral harassment, sexual harassment, and sexual abuse."***

In 1999 the National Coordinating Office for Women at the Ministry of Youth, Women, Children and the Family studied human rights among specific groups of women including working women, migrants, refugees and women prisoners.

In the case of workers, the study focused on existing mechanisms for the application of labor rights. A survey was conducted of 40 working women to determine how much the women knew of their labor rights and if they were being complied with according to legal norms. The women surveyed were between the ages of 18 and 69.

One of the questions asked referred to Article 106 of the **Labor Code**, which establishes that if a pregnant worker receives notification of termination of her employment, she should present a medical certification of pregnancy to her employer or to the relevant administrative authority within 20 days. If this is done, she has the right to be returned to her job and to receive backpay for the days following termination. After 20 days, and for the following three months, the worker can demand her job be returned and receive backpay for all the days since she presented the medical certification. If the employer does not comply, she can demand her job be returned through the relevant legal channels.

The following table states responses by those women surveyed to a question on this topic:

**Table No. 2**

Question: **Have you taken maternity leave from your job?**

<b>MATERNITY LEAVE</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
TOTAL	40	100
YES	10	25
NO(*)	29	73
UNANSWERED	1	3

(\*) Three of the women indicated they have no children and one said she did not work when she had her children.

Source: Ministry of Youth, Women, Children, and the Family. 1999. **“Clara González” National Brief: Situation of Women in Panamá.**

The following table deals with the right to 14 weeks of paid leave and the right to breastfeed, among others:

**Table No. 3**

Question: **Which rights have you exercised and which haven't you exercised?**

<b>RIGHTS</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
TOTAL	10	100
Pregnancy Leave	6	60
Pregnancy and Breastfeeding License	3	30
Other(*)	1	10

(\*) One woman indicated she works with employers who use a different system. Three women said they were not allowed to exercise the right to breastfeed.

Source: Ministry of Youth, Women, Children, and the Family. 1999. **“Clara González” National Brief: Situation of Women in Panamá.**

It is worth mentioning that the Ministry of Labor and Job Development relied upon the **Unit for Attending to Pregnant Working Women and Young Workers** for investigation of complaints filed by female workers threatened with firing or fired when pregnant or after being granted a pregnancy license. This Unit had the express purpose of educating women about their rights. Within the Labor Inspector-General's Office, the Unit was charged with inspecting businesses that violate maternity leave norms and demanding compliance with those norms.

This Unit was dissolved on December 26, 2002 by way of Resolution DM 227/2002, **“by which the organizational and functional structure of the Labor Inspector-General's Office are modified** and the Department of Technical Analysis and Evaluation, the Department of Attention to Child Labor, the Department of Protection of Young Workers, and the National Center for Workplace Health and Safety are created.”

This Decree, signed by former Minister Joaquín José Vallarino III and Viceminister Jaime Moreno (the current Minister), states near its end, in quotes -- without any further mention of operating procedures or staff training -- that: *“National and International Laws and Conventions on Gender, and requests for inspections related to these Laws and Conventions, will be handled by the four departments.”*

Other points addressed in the survey included possible causes of discrimination against women at the time of hiring. It has become common practice to request pregnancy tests or proof of birth-control use at the time of hiring. For many employers, hiring females incurs expense or inconvenience, since maternity leave and family obligations can cause a decrease in women workers' production capacity.

**Table No. 4**  
**Discrimination during the job search**

<b>Discrimination</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
TOTAL	40	100
YES	8	20
NO	31	78
UNANSWERED	1	3

Source: Ministry of Youth, Women, Children, and the Family. 1999. **“Clara González” National Brief: Situation of Women in Panamá.**

The average salary earned by Panamanian female workers varies by site and geographic region of employment. In urban areas women's salaries are usually lower than those of male co-workers. The imbalance is sometimes worse among women with advanced academic or technical qualifications.

Only 15% of those surveyed said they had experienced salary discrimination, compared to 83% who said they had not suffered salary discrimination

**Table No. 5**  
**Have you experienced salary discrimination?**

<b>DISCRIMINATED</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
TOTAL	40	100
YES	6	15
NO	33	83
UNANSWERED	1	3

Source: Ministry of Youth, Women, Children, and the Family. 1999. **“Clara González” National Brief: Situation of Women in Panamá.**

The Labor Code includes a prohibition of sexual harassment by employers, punishable by fines of \$25 to \$250 to be imposed by the judicial authorities (Art. 139).

**Table No. 6**  
**Have you experienced sexual harassment?**

<b>Sexual Harassment</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
TOTAL	40	100
YES(*)	3	8
NO	37	92

(\*) One of the surveyed workers indicated she was harassed by her boss but did not explain the circumstances. Another said she was harassed by a co-worker who made sexual innuendos and gross suggestions toward her. The third said she was harassed by a neurologist who made indirect comments about her body.

Source: Ministry of Youth, Women, Children, and Family. 1999. **“Clara González” National Brief: Situation of Women in Panamá.**

The 2000 Population and Housing Census stated Panamá’s population as 2,839,177 people, of which 1,432,566 are males and 1,406,611 are females, for a ratio of 101.8 men per 100 women -- that is, one extra man for every 100 women. This Census reflected a marked division of labor between the sexes, with particular disadvantages for women in less prestigious and lower paying jobs. Even with higher levels of education and training, women receive lower incomes than their male counterparts for the same work.

According the the 2000 Census, 68.18% of the Economically Inactive Population is female. Economically inactive women do not receive benefits, the right to vacation, retirement benefits, etc.

The average salary for women with primary educations is \$120.60, equalling 70.7% of their male counterparts' average of \$170.50. For the university-educated population the comparison is even worse, with women receiving 65.1% of their male counterparts' average salary.

**Table No. 7**  
**The population ten years of age and older, by monthly income, according to sex and educational level.**  
**2000 Census**

<b>Level of Instruction</b>	<b>Employed Population ≥ 10 years old</b>	<b>Average monthly salary</b>	<b>Average monthly salary Male</b>	<b>Average monthly salary Female</b>
Total	1,900,031	270.9	267.5	278.5
No formal schooling	53,575	93.3	96.3	79.6
Incomplete Primary	110,556	119.5	123.3	108.4
Complete Primary	213,373	177.7	193.6	125.0
Primary	420	209.1	228.6	159.4
Unspecified				
<b>Subtotal</b>	324,349	156.9	170.5	120.6

<b>Primary</b>				
Incomplete Secondary	192,423	236.6	261.5	189.9
Complete Secondary	193,682	331.0	349.0	301.3
Unspecified	590	300.0	327.0	238.8
<b>Subtotal Secondary</b>	386,695	284.1	304.5	242.5
1-3 years University	72,102	424.8	466.0	390.0
4 or more years University	105,509	674.2	818.3	584.6
Unspecified	539	660.0	780.4	562.3
<b>Subtotal University</b>	178,150	555.0	629.6	508.4
Graduate	6,915	893.1	1,132.6	784.9
M.S.	9,514	1,488.2	1,907.5	1,210.9
PhD	1,732	2,408.8	2,627.0	1,923.7
Advanced Non-University	16,283	435.6	479.2	395.8
Vocational Special Education	31,119	293.3	328.0	218.9
Undeclared	1,045	141.4	154.6	111.6
	1,460	295.6	308.3	262.7

Sourece: Comptroller General's Office of Statistics and Census. **National Population and Housing Census**, May 14, 2000.

## VI. Public employees and special laws pertaining to them

The Political Constitution treats **public servants or functionaries** differently from other workers. Title XI concerns those workers, who are excluded from many of Labor Code's benefits. They are assigned special programs divided up by careers: administrative, judicial, teaching, etc. (Art. 300). This differential treatment was established despite the fact that the Panamanian state ratified International Labor Organization (ILO) Convention 87, which states that public and private sector workers should not be differentiated, via Law 45 of 1967.

State employees are left unprotected and granted inferior rights compared to private sector workers in three main areas covered by the Labor Code:

- a. The right to unionization. Although it is not expressly prohibited for public sector workers to form trade unions, they are not included in Article 64. In practice, the government uses this to impede the formation of public sector trade

unions, only recognizing their right to create associations with social aims -- associations that do not have the legal capacity to engage in collective bargaining concerning working conditions.

- b. The right to job stability. Each incoming administration engages in mass layoffs of administrative branch employees, replacing them with their own people. This happens despite a law passed in the mid-1990s seeking to prohibit the practice.
- c. Minimum wage. When the government adjusts the minimum wage every two years, it discriminates against public sector workers by not including them in the increase. Thus 30,000 public sector workers are left earning lower salaries than the minimums for private sector jobs.

The Panamanian government systematically violates and refuses to recognize public employees' rights protected by the International Labor Organization. For that reason, the National Federation of Public Servants' Associations (FENASEP) was formed in 1984. Without having its rights as a trade union legally recognized, the organization fought in defense of public servants' labor rights, sometimes achieving victories and other times falling victim to persecution and firings of its leaders.

FENASEP includes 27 associations representing approximately 60,000 affiliated public employees, out of a total of 182,700 employees of the Panamanian state (representing 14.2% of the nation's labor force). The associations of workers affiliated with FENASEP belong mainly to central government institutions (Ministries) and autonomous entities -- with the exception of educators, who have their own unions with 65,000 total members.

In evident contradiction of **International Labor Organization Convention 8** concerning union freedom, **Law 9 for Administrative Careers was adopted on June 20, 1994**. The law expressly denies public functionaries' right to form trade unions, stating that they can only form associations "of a socio-cultural and economic character....which have as their goals the promotion of study, training and protection for their members and the presentation of concerns before the Appeals and Conciliation Council for Administrative Careers and before the General Directorate of that entity....." (Art. 174).

This violation of international labor laws has been systematically and fruitlessly denounced by FENASEP and trade union leaders of the public employees' associations. These organizations continued their protests when President Mireya Moscoso's administration suspended implementation of the Administrative Career and proceeded to fire close to 20,000 public sector workers between 1999 and 2003.

In June 2001 FENASEP's Secretary General, Leandro Avila, attended the ILO's 8911 Tripartite Labor Conference in Geneva, Switzerland. He presented two formal denunciations of the Panamanian government. One was for violating the Convention on trade union freedom and the other was for workplace discrimination. The first denunciation refers to the persecution and systematic firing by the government of public employees associations' leaders and FENASEP members. The second refers to the problem of the minimum wage law, which systematically excludes public sector employees.

Regarding minimum wage, FENASEP also presented a formal denunciation before the Interamerican Commission for Human Rights of the Organization of American States (OAS) on March 7, 2002. This denunciation was presented in the name of 30,000 public employees who received salaries below the legal minimum and who were excluded from Decree-Law 59 of June 9, 2000, which regulates minimum wage adjustments in the country. This international denunciation was made after the Panamanian Supreme Court rejected a case against Decree-Law 59.

FENASEP considers this repeated discriminatory attitude on the part of the authorities a violation of the American Convention on Human Rights, in its articles 1, 2, 3, and 7. This OAS protocol was signed in San Salvador on November 17, 1998, and the Panamanian state is a signatory (FENASEP, 2002).

The mass layoffs of public sector employees denounced by FENASEP occurred during the administration of President Mireya Moscoso (1999-2004), but they had an early precedent during the administration of President Guillermo Endara (1989-1994) -- which was also denounced before the Interamerican Commission for Human Rights of the OAS.

In December 1990, FENASEP and other public sector unions held a general strike that coincided, on December 5, with an uprising by officials and police that was crushed by U.S. troops. This event served as an excuse for the government to create **Law 25 of December 1990**, "by which government entities adopt means to protect Democracy and Constitutional Order."

Law 25 of 1990 declared "invalid the appointments" of public servants who "participate in the calling for, organization of, or carrying out of actions that threaten Democracy and Constitutional Order." By this was meant the call to strike. They did not take into account whether the public servants were trade union leaders (or leaders of public employees' associations) or not, nor did they take into account whether the public servants were protected by a trade union charter. Article 4 of this law suspended the effects of Chapter VI, Title I, Section Two of the Labor Code, concerning trade union freedom. Article 6 of the law made it retroactive through December 4, 1990.

Law 25 was denounced as a repressive measure restricting State employees' freedom of expression, freedom of opinion, and trade union freedom. Thousands of functionaries were fired using this law. Public sector workers' associations were beheaded [that is, the associations' leaders were fired]. The affected workers brought a legal appeal before all national and international authorities. Ten years later, the Interamerican Court for Human Rights ruled favor of the plaintiffs, demanding that the Panamanian State compensate them with an indemnification payment -- which still has not been paid in full.

## VII. The evolution of laws concerning child labor and young workers

In Panamá the prevailing laws concerning child labor can be found primarily in the **Political Constitution (1972)**, the **Labor Code (1971)**, and the **Family Code (1994)**. Unlike the laws concerning adults' labor, which have experienced regression in their social content during the 1980s and 1990s, the laws protecting minors progressed in important ways during the 1990s -- with the Family Code and other later laws, as well as the creation of some special programs.

The norms concerning child labor established in various legal instruments are complementary. They have been developed based on the ILO Conventions on these matters -- although in some respects, as we will discuss, they continue to be insufficient or they leave open loopholes that are exploited by some business owners. The penalties for violation of these norms are often derisory and there are loopholes in the mechanisms used to collect their payment.

In Article 17 and Article 19, Title III, the **Political Constitution** assures enforcement of all Fundamental Guarantees for all residents of the country, without differentiations of any kind -- including status as a minor. Specifically, Chapter 2, which deals with the Family, establishes in Article 52 that "the State shall protect the physical, mental and moral health of minors and shall guarantee their right to food, healthcare, education, security, and social provisions."

In Chapter Three, which deals with labor, the Political Constitution establishes the principle that "equal work under identical conditions shall receive equal salary or wages, regardless of who performs it, without distinctions based on sex, nationality, age, race, social class, political views, or religion." This principle assures working minors the same labor right that adults enjoy, namely the rights to unionization, strike, collective bargaining, vacations, etc.

Article 66 establishes precise limits for the length of minors' workday: "it is prohibited for minors under fourteen years of age to work"; and it is prohibited for "minors under sixteen years of age" to work at night. This article sets the maximum workday length for minors (between 14 and 18 years of age) as six hours. It also prohibits employment of minor under 14 years of age in domestic work and unhealthy occupations.

The **Labor Code** elaborates on these rights, establishing the conditions and restrictions for minors' work in Articles 117-124. Article 117 of the Labor Code and Article 510 of the **Family Code** state the prohibitions on child labor: **these prohibitions are total for minors under 14 years of age and for minors who have not completed primary school**. They also prohibit absolutely employment of minors for shifts between 6:00pm and 8:00am, during holidays, or for overtime shifts (Art. 120).

The employer must also take schooling needs into consideration when hiring a minor and setting his or her working hours. For this reason, minors under 16 years of age may not work more than 6 hours per day or more than 36 hours per week, and those between 16 and 18 years of age may not work more than 7 hours per day or 42 hours per week (Art. 122).



Article 118 of the Labor Code states the types of work that are prohibited for minors under 18 years of age (but over 14): those that "by their nature or their conditions in which they are carried out, are dangerous to the life, health or morality of the persons who perform them." Six categories of work to which this prohibition applies are listed: work at places where alcoholic beverages are sold; transportation of passengers or merchandise, including at docks and piers and in warehouses; production and transmission of electricity; work that involves handling explosive or flammable substances; underground work in mines, quarries, etc.; work that involves handling radioactive substances. The law makes exceptions for some of these activities for the specific purpose of vocational education, when the minors are duly supervised and the authorities approve. In the ILO-IPEC's judgment, the formulation of the law "leaves exploitation of children unmentioned" (ILO, 2003).

The Labor Code establishes the types of economic activities in which minors may be employed but with restrictions: in light agricultural or fishing work, outside school hours (Art. 119); in light domestic work, if the Ministry of Labor has authorized it (Art. 123).

Article 121 of the Labor Code obliges the father or legal guardian of a minor to sign the minor's work contract. In cases where these do not exist, a signature must be obtained from a proper authority. Article 124 determines that the employer must maintain a special register with information about each working minor, in which they must state: the minor's name and that of his or her parents; the minor's date of birth and address; the type of work to be performed; working hours; wages to be received; and the level of education the minor has achieved. The Labor Code guarantees the right of minors 14-18 years of age to join trade unions, but it prohibits them from becoming part of a trade union's Board of Directors (Art. 337). The Labor Code also restricts the hiring of minors to work outside the country (Art. 101).

Chapters II and III of the **Family Code** -- which was approved in Law 3 of May 17, 1994 -- deal with the topic of minors' fundamental rights and the aspects of labor that affect minors. Article 508 of the Family Code defines working minors, in agreement with what the Political Constitution and Labor Code established. Article 509 reiterates the prohibition of work by minors under 14 years of age. Article 510 agrees with Article 118 of the Labor Code, dealing with the types of work for which the hiring of minors (14-18 years of age) is restricted. Articles 511 and 512, in agreement with the respective Labor Code norms, indicate the procedures for hiring minors and the length of minors' work shifts.

Article 513 of the Family Code determines that working minors will have the same rights as adults regarding salary and social protections. Articles 713-715 of the Family Code elaborate upon ILO Conventions 77 and 78 (which Panamá ratified in 1981), concerning providing obligatory medical examinations for minors as a prerequisite for hiring them. Articles 716 and 717 extend this requirement to women and to minors 12-14 years of age who carry out agricultural or domestic work -- which contradicts the principle prohibiting work by minors under 14 years of age.

In addition to this law, and in harmony with it, Panamá has enacted more than 40 other laws concerning child labor over the course of its history. Among these are included ILO Conventions 10, 15, 16, 58, 77, 78, 112, 123, 124, 127, 138 and 182. Also included are the Convention on Children's Rights, its Optional Protocols, and a Memorandum of Understanding with the International Program for the Eradication of Child Labor, IPEC (ILO, 2003).

With the goal of implementing the Memorandum of Understanding with the ILO, a Committee for Eradication of Child Labor and Protection of Working Minors was created in 1997. It is made up of 17 representatives from governmental and nongovernmental organization, coordinated by a Technical Secretary, and presided over by the First Lady. For two years the government was not sure to which Ministry it should attach this Committee. It went from the Ministry of Labor and Job Development to the Ministry of Youth, Women, Children and the Family, then returned to the Ministry of Labor and Job Development in 1999.

In 2000, during the Tenth Ibero-American Summit of Presidents and Heads of State, which was carried out in Panamá, this Committee was installed again and ILO Conventions 138 and 182, concerning The Minimum Age for Admission to Work and Eradication of the Worst Forms of Child Labor, were ratified.

However, as pointed out previously, the body of laws is weakest in establishing penalties for employers who infringe upon these norms. Article 125 of the Labor Code establishes fines of between 50 and 700 Balboas (U.S. dollars) for employers who do not comply with these laws. The fines need not be paid urgently; they can be paid at the end of the fiscal year. For its part, Title XI of the Family Code expands these penalties to include warnings, fines, suspension of a commercial license, and even closure of a recidivist company.

The ILO-IPEC's report **Qualitative analysis of the child labor situation in Panamá** states: "These penalties established in the Family Code do not clearly imply all the prohibitions contained in the Second Book 'Of Minors,' which regulates minor's work; nor do they deepen in all cases the previously established norms concerning the moral -- that is to say, situated in the social field." It cites Article 562, which sets penalties of between 2 and 12 months in jail and fines of 50-1,000 Balboas (U.S. dollars) for those who involve minors in immoral acts, including prostitution. The report concludes: "The penalty relies on demonstrating that an act or omission contributed a minor acting against what is moral. However, what is moral is not clearly defined anywhere in the norm....." (ILO, 2003).

This has led to situations like the one denounced to labor authorities by the lawmaker Teresita Yanis de Arias (**La Prensa**, February 6, 2004), in which thousands of indigenous minors in the provinces of Chiriquí and Bocas del Toro have been laboring in the coffee harvest, "including within 50 meters of President Mireya Moscoso's farm."

The lawmaker cites the Final Results of the ILO-IPEC's Child Labor in Panamá Survey, which show that out of 755,000 children between the ages of 5 and 17, 18% (57,000) are economically active.

In addition to agricultural jobs such as coffee or sugar cane harvesting, child labor is evident in all the major Panamá City supermarket chains. 14 year olds are employed in these supermarkets as packers, without fixed wages or any social benefits. They receive only tips from the establishments' clients.

In October 2000, the Inspector General carried out the first **Child Labor Survey**, which brought to light the situation of labor by minors in Panamá. According to the survey's results, minors between the ages of 5 and 17 make up 37.8% (755,032) of the country's population. This group is potentially at risk of being partially or totally involved in economic activity.

Of these, 57,524 are economically active. 47,976 are employed, 9,548 are unemployed, and 3,724 are seeking a job. The other 697,508 are economically inactive.

Of the 47,976 minors that work, only 42% attend school. Desertion of school is more widespread among males, in rural area, and in indigenous areas (Aquino, 2003).

**Table No. 8**  
**The child and adolescent labor force,**  
**according to region and province, by sex**  
**(2000)**

Region and Province	Total			Males			Females		
	Total	%	Rate of activity (%)	Total	%	Rate of activity (%)	Total	%	Rate of activity (%)
<b>Total</b>	<b>57524</b>	<b>100.0</b>	<b>7.6</b>	<b>43082</b>	<b>100.0</b>	<b>11.1</b>	<b>14442</b>	<b>100.0</b>	<b>3.9</b>
Urban area	21215	36.9	4.9	14020	32.5	6.4	7195	49.8	3.4
Rural area	36309	63.1	11.1	29062	67.5	17.0	7247	50.2	4.7
Non-indig. area	47220	82.1	6.9	36015	83.6	10.2	11205	77.6	3.4
Bocas del Toro	1726	3.0	7.9	1328	3.1	12.0	398	2.8	3.7
Coclé	5357	9.3	9.2	4575	10.6	14.4	782	5.4	2.9
Colón	2768	4.8	4.8	2386	5.5	8.2	382	2.6	1.3
Chiriquí	5975	10.4	6.2	4714	10.9	9.3	1261	8.7	2.8
Darién	1075	1.9	9.5	914	2.1	15.9	161	1.1	2.9
Herrera	1982	3.4	7.6	1725	4.0	12.6	257	1.8	2.1
Los Santos	1616	2.8	8.6	1302	3.0	13.9	314	2.2	3.4
Panamá	18638	32.4	5.6	12790	29.7	7.5	5848	40.5	3.6
Veraguas	8083	14.1	13.4	6281	14.6	19.4	1802	12.5	6.4
Indigenous areas	10304	17.9	14.3	7067	16.4	19.9	3237	22.4	8.9

*Note:* 100% equals the 9 provinces plus the indigenous areas, or the urban plus rural areas. The non-indigenous area equals the total of the 9 provinces.

Source: Inspector General/DEC, Child Labor Survey, October 2000

In percentage terms, the Panamanian child and adolescent labor force has a 7.6% rate of activity and it makes up 7.9% of the country's total labor force. 60% of working minors are from rural areas.

**"Out of every 100 children or adolescents in the labor force, 26 are between 5 and 13 years of age and 37 are between 5 and 14 years of age. This means that the legal minimum age for access to work is not being complied with, or that there is permissiveness under certain conditions" (Aquino, 2003).**

Categories of economic activity performed by the child and adolescent labor force, according to sex and type of activity, by region.

**Table No. 9**  
**Categories of economic activity performed by the child and adolescent labor force,**  
**according to sex and type of activity, by region**  
*(2000 percentages)*

Sector and Field	Total			Urban areas			Rural areas			Indigenous areas		
	T	M	F	T	M	F	T	M	F	T	M	F
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Primary Sector</b>	49.3	56.8	25.8	4.9	7.2	0.2	73.5	79.3	49.6	82.4	92.1	62.0
Agriculture and related	47.0	54.0	25.1	3.8	5.6	0.2	70.5	75.9	48.4	77.1	84.3	62.0
Fishing	2.3	2.8	0.7	1.1	1.6	-	3.0	3.4	1.2	5.3	7.8	-
<b>Secondary Sector</b>	6.9	6.5	8.1	8.4	10.3	4.5	6.1	4.8	11.5	8.4	2.3	21.4
Mining	0.2	0.2	-	0.4	0.6	-	-	-	-	-	-	-
Manufacturing industries	3.5	2.5	7.1	3.3	3.8	2.4	3.8	1.9	11.5	6.9	-	21.4
Electricity, gas and water	0.1	0.1	-	-	-	-	0.1	0.1	-	-	-	-
Construction	3.1	3.7	1.0	4.7	5.9	2.1	2.2	2.8	-	1.5	2.3	-
<b>Tertiary Sector</b>	43.8	36.7	66.1	86.7	82.5	95.3	20.4	15.9	38.9	9.2	5.6	16.6
Wholesale commerce	16.6	16.3	18.0	34.0	38.5	24.9	7.2	6.4	11.5	4.6	2.2	9.5

Hotels and restaurants	2.3	1.4	5.1	4.9	3.0	8.7	0.8	0.6	1.8	0.8	1.1	-
Transportation, storage and communications	3.7	4.6	1.0	6.2	8.8	0.8	2.4	2.7	1.1	1.5	1.1	2.4
Financial intermediaries	0.3	-	1.0	0.7	-	2.1	-	-	-	-	-	-
Real estate activities	1.3	1.0	2.0	3.2	2.7	4.2	0.2	0.2	-	-	-	-
Public administration, law	0.1	-	0.4	0.3	-	0.9	-	-	-	-	-	-
Teaching	0.4	0.2	1.0	1.1	0.5	2.1	-	-	-	-	-	-
Social and health services	0.1	0.1	-	0.3	0.4	-	-	-	-	-	-	-
Other community, social and personal services	11.1	12.2	7.9	21.3	26.6	11.0	5.6	5.6	5.1	1.5	1.1	2.4
Domestic service in private homes	7.8	0.9	29.5	14.7	2.0	40.6	4.1	0.4	19.0	0.8	-	2.4
Unspecified activities	0.1	-	0.2	-	-	-	0.1	-	0.4	-	-	-

*Source:* Inspector General/DEC, Child Labor Survey, October 2000.

Another study based on the 2000 Population and Housing Census estimates that among workers 10-17 years of age, 43% do agricultural work, 16.44% are in domestic service, and 14% are in the commercial sector (ILO-IPEC, 2002).

A third study carried out among minors who work as packers for supermarket chains confirmed that the primary motive for their work is economic necessity. Nearly one-third (27%) of these minors acknowledged having started work as a packer before turning 14, which violates the legal minimum limit. This survey also showed potential violations of the norms concerning maximum workday lengths for minors. 31.7% of those surveyed said they work "all day" and 9.8% said they work eight hours per day. 25.8% said they only work on weekends, without specifying the length of their shifts (Rivera, 2003).

### **VIII. The social consequences of economic and labor reforms**

One immediate consequence of this labor policy was an abrupt shift from stable forms of employment to what are known as precarious forms of employment. According the Industrial Trade Union of Panamá (SIP), 69% of the industry fired employees during 1996, after the labor reform. 44.8% of industrial companies fired both temporary and permanent workers; 24.1% fired only permanent workers (Aizpurúa, 1996).

14.3% of industrial companies have turned to the practice of underemployment. Out of all the companies that underemployed workers that year, one out of every six did so because it preferred underemployment over firing workers. 17% both underemployed workers and fired temporary workers. 33% both underemployed and fired (exclusively) workers with

indefinite-term contracts. The rest did not renew limited-term contracts and reduced the number of permanent staff.

The Inspector General -- the entity charged with studying the employment situation in Panamá -- defines the Population of Working Age (PET) as "the population 15 years of age or older that normally resides in individual dwellings, with the exception of non-familiar groups (that is, people who live in collective dwellings, such as: reformatories, jails, penal colonies, hospitals, hotels, boarding houses, boarding schools, and other similar lodgings). Likewise, the areas primarily inhabited by the indigenous population are excluded from the survey, as are the residents of dwellings located in Canal Zone areas that have not been returned" (former U.S. military bases) (Inspector General, 1999).

The Population of Working Age is subdivided into the Economically Active Population and the Economically Inactive Population. The Economically Active Population is in turn subdivided into the Employed Population and the Unemployed Population. The first of these consists of those persons age 15 or older who, during the week the Housing Survey was conducted by the Inspector General, a) had a paying job; b) worked in their own or a family business; c) had a paying job even though they have not engaged in it in recent days due to temporary circumstances (illness, for example); or d) did occasional jobs.

The Unemployed Population consists of those persons age 15 or older who a) did not have a job but were seeking employment; b) were not seeking a job, but later found one; c) have never worked but were seeking their first job; d) were not seeking a job, but had sought one previously; or e) were not seeking a job, stating that it is impossible to find one.

According to the most recent data from the November/December 1998 Housing Survey, the labor situation was the following:

- a) The Population of Working Age was made up of 1,752,477 people, while the Economically Active Population was 1,098,472 (that is, 62.7%). The Economically Inactive Population was made up of 654,005 people (37.3%).
- b) At that time 88.8% of the Economically Active Population was employed (that is, 974,903 people). 11.2% (123,569 people) were unemployed.
- c) The unemployment rate had dropped 2.2% from the previous measurement in August 1998. It had dropped a bit more than that from the average unemployment rate over the previous five years, 13.8%. This positive data should be put into context, however: measurements at the end of 1998 could have been affected by the increase in seasonal work characteristic of the festivities at the end of the year.
- d) This last observation is corroborated by the fact that the largest increases in employment was seen in wholesale and retail commercial activities, motor vehicle repair, personal effects, and domestic tasks -- with an increase of 12,305 posts compared to August 1998. Compared to November/December 1997 the increase for these activities was of 23,343 jobs.
- e) By August 1997, the majority of the country's employed population was employed in the tertiary sector, which employed 572,617 people. Of these, 168,146 worked in wholesale and retail commerce. The secondary sector

employed 166,902 people, 96,227 of which worked in the manufacturing sector. The primary sector employed 169,536 people. The unemployment rate was highest in the secondary sector, reaching 15.4%. It was 10.6% in the tertiary sector and just 3% in the primary sector in 1997.

- f) In November 1998, 16.5% of the labor force worked for the State; 42.9% worked in the private sector; 1.3% worked for the Canal Commission and military bases (U.S. agencies); 5.6% worked in domestic service; 30.5% were self-employed or were business owners (the two categories were mixed); and 3.2% were family workers.
- g) Regarding types of occupation, in November 1998 the majority were in one of the following categories: services, 197,633; artisans and machinists, 178,988; farmers, ranchers and fishers, 170,347; professionals and technicians, 128,975; vendors and related positions, 127,536; office employees, 111,774; managers and administrators, 58,067; chauffeurs, 58,040; workers and day laborers, 39,334; never had a job, 27,453.
- h) The unemployment rate was higher in what is called the Metropolitan Region (the cities of Panamá and Colón, where 70% of the country's economic activity takes place), with 13.3% unemployed. Unemployment in the rest of the country (including urban and rural areas) was 7.8%.
- i) It must be pointed out that unemployment affected 16.8% of women, whereas it affected 8.1% of men. Panamanian women's unequal participation in the job market can also be seen in the fact that, while 81.1% of men are part of the Economically Active Population, only 44.6% of women are.
- j) Some economic analysts estimate that 106,366 new jobs were created during the first four years of the Ernesto Pérez Balladares administration. However, 42% (44,620) of these new jobs belonged to the category of self-employed. By contrast, between 1989 and 1994 145,490 jobs were created, with only 3% of them (3,339) in informal positions (Gordón, 1999).
- k) On average, 37,333 people enter the Panamanian labor market each year. This implies that in the next five years at least 186,665 jobs should be created, leaving aside the 123,000 people who are currently unemployed.

The most recent in-depth study of poverty in Panamá is the National Levels of Livelihood Survey conducted between June and October of 1997 by the Ministry of Planning and Economic Policy (MIPPE), now known as the Ministry of Economy and Finance (MEF). 5,613 homes were visited throughout the country, including in indigenous areas. It should be remembered, in looking at the Inspector General's data, that the Housing Survey the Inspector General's office carries out three times per year studies employment and income, not poverty.

In the National Levels of Livelihood Survey (ENV), which was financed by the World Bank, the extreme poverty line was set by looking at annual spending per person on food to cover minimum caloric needs (of 2,280 calories per person on average). The cost of meeting this requirement was used, methodologically, as the criterion for setting the extreme poverty line at \$470 per person per year. The poverty line was established as \$726 per person per year.

Based on these criteria, they reached the following conclusion: of Panamá's 2.7 million inhabitants, poverty affects a little more than one million, representing 37.1% of the population and 27.9% of all homes. Out of this total number of poor people, more than 500,000 are in extreme poverty. 21.6% of the population and 14.9% of the country's homes live in extreme poverty.

Poverty is most concentrated in rural areas. 76% of the people in poverty and 88% of the people in extreme poverty live in rural areas. In absolute numbers, 769,000 people in rural areas are poor, of which 519,000 live in extreme poverty. 63% of all people in rural and indigenous areas live in poverty, and 43% of all people in rural and indigenous areas live in extreme poverty. 95% of the indigenous population (195,000 indigenous people) live in poverty. 88% of indigenous people (181,000) live in extreme poverty.

Urban areas, where 56% of the population resides, have 24% of the country's poor persons (246,000) and 12% of those living in extreme poverty (72,000). 16% of the people living in urban areas live in poverty and 5% of the people living in urban areas live in extreme poverty.

An average of 5.6 people lives in each poor home, compared to 3.7 people per home of those who are not poor. In indigenous areas the size of the home grows to an average of 7.2 people. The average number of children under 12 years old in poor homes is double the number for homes of people who are not poor. The average educational level reached by the heads of poor households is half the level reached by the heads of households that are not poor -- 4.5 years of schooling compared to 9.2 years of schooling.

While the illiteracy rate is minimal among those who are not poor, one-fifth of the poor population is illiterate and one-quarter of the extremely poor population is illiterate. One-third of indigenous people are illiterate, and the rate is 50% for women.

The proportion of households headed by women is higher for homes that are not poor than it is for poor homes (25.8% compared to 18.2%). At the national level the number of women heads of household seems to increase in relation to consumption capacity. However, this relationship changes in urban areas, where the number of homes headed by women that are poor (31.1%) and extremely poor (32.7%) surpasses the homes headed by women that are not poor (28.3%).

35% of poor homes have dirt floors, as do 57% of indigenous homes. The density of persons per room is 3.4 in extremely poor homes and 2.8 in poor homes. 83% of poor homes are made in separate dwellings, but 66% of these lack property titles.

Although 73% of poor homes have access to potable water, 47% of poor homes receive irregular service. In the indigenous sector, 57.8% of homes lack potable water.

60% of the indigenous poor lack bathrooms, whereas only 7% of homes in urban areas lack bathrooms. Over 40% of poor homes have latrines instead of toilets connected to septic



tanks or sewers. In urban areas, only 7% lack electricity, but the percentage goes up to 61% for the rural poor and 93% for indigenous people.

The fertility rate is highest among poor women between 15 and 49 years of age, with an average of 3.86 children born alive -- compared to 2.38 children per woman who is not poor. For women living in extreme poverty the fertility rate is 4.39 children per woman. Among indigenous women, the rate is 4.71.

Poor homes have more people working (1.8) on average than the homes of those who are not poor (1.6), but this difference does not cover the greater size of poor homes -- increasing the rate of dependence.

Poor people's participation in the labor force (61.9%) is a bit lower than the national average (63.8%) and the rate among those who are not poor (64.7%). Men's rate of participation is steady throughout the country, but poor women's rate of participation is only 35.9% and the rate for women living in extreme poverty is 35.1%.

70% of poor workers work in the informal sector as family helpers, laborers in small companies, domestic servants, etc. Only 39% of those who are not poor work in the informal sector.

Among poor people the unemployment rate is 13.4%, whereas among those who are not poor it is 8.7%. Poor women's unemployment rate is three times higher than that of men. Also, the unemployment rate is higher among those between 15 and 29 years of age.

For minors between the ages of 10 and 14, the rate of economic activity reaches 11% -- that is, 27,000 minors (20,000 boys and 7,000 girls). 73% of these live in rural areas -- half work in agriculture and one-quarter in the commercial sector.

57% of the rural poor do not have access to land, while 67% do not have property titles. Finally, doing a comparative analysis of poverty on a national level by looking at previous measurements (in 1970 and 1983) and this 1997 study, the conclusion can be reached that over 14 years the incidence of poverty has decreased very slightly: by 1.6%.

In 1970, total poverty stood at 39% and extreme poverty at 25%. In 1983, poverty was estimated at 38.7% and extreme poverty at 20%. In 1997, poverty was estimated at 37.1% and extreme poverty at 21.6%. It is important to note that difficult to access and indigenous populations were not included in early surveys. Those populations were included in the 1997 survey.

But the methodology of the 1997 Survey (ENV) is questionable. The monthly cost of basic foods, calculated at the time by the MIPPE as \$226.69 dollars per month, was not used to define the extreme poverty line. This quantity, divided by the average number of persons per family, should set the line of extreme poverty at \$47.03 dollars per person per month, rather than at \$39.17, as it was set by the National Levels of Livelihood Survey.

Using the cost of basic food as a reference, and looking at the income manual produced by the Inspector General's Survey of Homes, the International Labor Organization (ILO)) estimated the percentage of poor homes at 41% in 1996. This represented a 1.2% increase over the previous year (1995). According to their estimates, the percentage of homes in extreme poverty was 18.6%.

According to the ILO, in 1996 (the most recent year for which we have access to figures) 48.3% of the Panamanian population was in poverty, and 23.1% of the population was destitute. In rural areas, 71.2% of the population was in poverty, compared to 37.4% in urban areas. In rural areas, 40.7% were extremely impoverished, compared to 14.8% in urban areas.

The ILO compared figures from the first six years of the 1990s and concluded that poverty rates decreased by 7.6% from their highest levels, which were reached in 1991 when 48.6% of households and 55.3% of people were in poverty. Part of the notable decrease in poverty is accounted for by the economic recovery experienced by the whole country after the difficult years of economic and political crisis at the end of the 1980s.

The 1997 National Levels of Livelihood Survey compared income distribution for that year with the years 1970 and 1983. "If the population is divided into fifths by per capita income -- that is, separated by each group of 20% -- it can be seen that in 1970 the 20% with the highest income earned 61.2% of total income. In 1983 this highest bracket earned 50.4% of the country's total income, and in 1997 it earned 62.5% of total income. On the other hand, the bottom fifth earned only 1.8% of total income in 1970, 2.9% in 1983, and 1.5% in 1997 (ILO).

In 1997, national average annual per capita consumption was estimated at US\$1,400, varying between US\$247 per capita in the bottom fifth of the population and US\$3,575 per capita in the upper fifth. In other words, the top fifth consumes, on average, 15 times more than the bottom fifth. Going up from the bottom fifth to the 20th-40th percentile fifth, total consumption doubles. The same happens when going from the 60th-80th percentile fifth to the top group. The GINI coefficient for income was estimated at 56.3 for 1970, 55.4 for 1983, and 58.0 for the year 1997. When the indigenous population of Panamá is considered, the GINI coefficient for 1997 rises to 60.

The GINI coefficient for consumption was estimated at 39 for urban areas, while in rural areas it was 46 and on a national level it was 47 -- "higher than most countries in Latin America."

Moving away from official statistics, in 2002 we studied (Beluche, 2002) the employment and poverty situation among Panamanian families, using the results of the 2000 National Census. We believe these results are more reliable because they are based on Census data (which are broader than the data used by the surveys we have cited) and because they allow for a global perspective on the state of Panamanian society at the decade's end -- something that gives us a more precise picture of reality.

According to Table No. 8 of Volume I of the May 14, 2000 National Census, there were 699,415 households in the country at the time of the census. Of these, 251,918 households -- with an average of 3.7 persons per household -- had incomes below 250 Balboas per month. In other words, **36% of Panamanian households were in extreme or absolute poverty.**

Another 205,295 Panamanian households -- with an average of 3.9 persons per household -- had incomes below 600 Balboas per month. In other words, **29.4% of our households were in relative poverty.** Adding together absolute, extreme and relative poverty, we find that **general poverty affected 65.4% of households**, with an average of 3.8 persons per household.

Households classified as **not poor, based on their having incomes above 600 Balboas per month, number 242,252, or 34.6%.** They have an average of 4.2 persons per household.

In order to estimate poverty not by household but instead by person, we multiply the average number of household members at each level: extremely poor, relatively poor, poor, and not poor. This calculates the population in **extreme poverty as 935,076 persons or 33.5%** and those in **relative poverty as 810,130 persons or 29.1%.** Adding these together, we find **a general poverty rate of 62.6% of the population, or 1,745,206 persons.** The population classified as **not poor consists of 1,017,026 persons or 37.4%.**

Extreme poverty affects a larger proportion of households with female heads of households than those with male heads. According to the Census, **528,571 households are headed by males (75.6%), compared to 170,894 headed by females (24.4%).** Of the total households headed by males, **180,230 or 34.1% are in situations of extreme poverty, with monthly incomes below 250 Balboas.** 71,688, or 41.9%, of households with female heads are in extreme poverty.

**158,736 households (30%) headed by males and 46,559 households (27.2%) headed by women are in relative poverty -- which is to say, they have monthly incomes between 250 and 599 Balboas.** Therefore **64.1% of households headed by males and 69.1% of households headed by females** are in situations of poverty.

Poverty is most concentrated in Panamanian indigenous communities. The populations of the three indigenous districts are overwhelmingly in situations of poverty or extreme poverty. **The ethnicity in the worst situation is the Ngobe-Buglé. 92% are in extreme poverty, with a total of 97.2% households below the poverty line.** The Emberá District comes next in terms of the level of social deterioration, with 77.6% of households in extreme poverty and 90.1% below the poverty line. Kuna Yala is hardly better off, with 76% of households in situations of extreme poverty and a total of 88.7% in poverty.

The provinces most affected by poverty are: Darién, with 64.8% of households in extreme poverty and 83.7% in general poverty; Veraguas, with 61.4% in extreme poverty and

82.2% in poverty; and Bocas del Toro, with 44.8% of households in extreme poverty and 79.8% in poverty.

While it does not exhibit the kinds of extreme statistics just mentioned, the province of Panamá, which contains the bulk of the nation's population, has more than half its population -- 54.2% -- living below the poverty line, and 22.35% living in extreme poverty. The province of Panamá also has the highest percentage of non-poor households, 45.8%. Following the province of Panamá, Colón has the next highest percentage of non-poor households, 34.2% -- but it should be noted that the remaining 65.8% of families are in situations of poverty.

We will briefly make reference to the problems of unemployment and underemployment, as those factors are directly associated with family income, which is the standard we have used to determine degrees of poverty in this study. We have extracted information on unemployment and underemployment in the country from Table No. 10 in Volume II of the National Census.

At the time of the 2000 census, Panamá had an **Economically Active Population made up of 1,010,837 persons. 150,775 were unemployed, for an unemployment rate of 12.97%.**

The census information confirms earlier data showing that unemployment affects a greater proportion of Panamanian women than men. This is true even though women's recognized level of economic activity or participation (the percentage of persons capable of work who are part of the Economically Active Population) is half that of men.

Thus while **the male population has an unemployment rate of 11.12%, with an activity rate of 70.0%, the female population has an unemployment rate of 16.73% and an activity rate of 35.0%.** Unemployment affects young people most. **In the 20-24 years of age range, the unemployment rate is 20.6%.** And in the 25-29 years of age range, the unemployment rate is 13.3%.

The province with the highest unemployment rate is **Colón, where 17.6% of the Economically Active Population is unemployed.** For women in Colón, the rate reaches 22.6%, whereas for men it is 15%. The province of Panamá, where the largest numbers of people live, has an unemployment rate of 13% -- 16.5% for women and 11.1% for men.

**It is noteworthy that women's unemployment rates in indigenous districts are relatively low: 3.1% in Ngobe Buglé, 8.1% in Emberá, and 4.3% in Kuna Yala. However, it must be taken into account that women's economic activity rate in indigenous districts is also extremely low: 19% in Ngobe Buglé, 14.9% in Emberá, and 13.9% in Kuna Yala.**

The other crucial element for understanding the social deterioration of the country and its people is underemployment, a masked form of unemployment. Table No. 15 of Volume II, to which we have already made reference, shows that **293,013 persons -- that is, 29% of**

the total of 1,010,837 persons employed in the country -- said they were independent workers or self-employed.

If we leave business owners, family workers and members of cooperatives out of our calculations in order to compare the number of self-employed persons with the number of persons formally employed by the State, the private sector, or in domestic service (683,275 persons), we find that the underemployed constitute a group 43% of the size of the group of persons formally employed. We must add to this the fact that **of the total number of persons formally employed, 144,021 (21.1%) have temporary employment.** This demonstrates the increasing precariousness of labor the country has suffered in recent years.

In addition to unemployment and underemployment, low salaries constitute another factor strongly influencing poverty among the Panamanian people. According to census data, Panamá's labor force is made up of **1,010,837 workers who said they were employed** at the time of the census. Of these, **433,721 employed workers -- 42.9% of the total labor force -- said they receive less than 250 Balboas of income per month.** 250 Balboas is the minimum monthly wage for the best paid sectors in the metropolitan area, according to the most recent legal stipulation (which was established in 2000).

Continuing to apply the same criterion we have used to measure general poverty, **336,163 employed persons -- that is, 33.2% of employed persons -- said their monthly income was less than 600 Balboas.** If we consider a monthly salary lower than 600 Balboas insufficient for covering a family's vital expenses, we must reach the regrettable conclusion that **3/4 of the active labor force -- 76.1% of employed persons -- have incomes that must be defined as precarious.** To these must then be added the 60,123 persons the Census registers as "without income."

Separating the data by sex, we find: **out of 690,639 men who said they were employed, 7.2% said they had no income, 42.6% said their monthly income was less than 250 Balboas, and 32.9% said their monthly income was between 250 and 599 Balboas. Thus 82.7% of wage-earning men in the country have incomes below 600 Balboas per month.**

**For women: out of an employed labor force of 320,198 women, 3.3% said they had no income, 43.5% received less than 250 Balboas per month, and 33.9% received between 250 and 599 Balboas per month. Thus 80.7% of employed women have incomes lower than 600 Balboas per month.**

The social deterioration of the Panamanian people is clearly appreciable if we take earlier Census studies into account. The comparison shows that levels of poverty have increased over time: **in 1970 39% of households were poor; in 1980 37% were poor; in 1990 44% were poor; and in 2000 65.4% of our households are poor.**

The data allow us to conclude that neoliberal implemented over the last 20 years have deteriorated the Panamanian people's quality of life. It is worth asking who bears

responsibility for this social deterioration and whether there is a way to resolve it. In Panamá, as in all of Latin America, neoliberalism has failed as a model for social and economic development. The statistics cited in this report provide proof of this failure.